

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

March 8, 2001

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, March 8, 2001 at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Jerry Michaelis, Acting Chair; James Barfield (late arrival); Kerry Coulter (late arrival); Frank Garofalo; Bud Hentzen; Bill Johnson; Richard Lopez; Ron Marnell; John W. McKay, Jr.; George Platt; Harold Warner; and Ray Warren. Susan Osborne-Howes was not present. Staff members present were Marvin Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner, Scott Knebel, Senior Planner; Bill Longnecker, Senior Planner; Karen Wolf, Recording Secretary; and Valerie Robinson for Unified Zoning Code.

1. Approval of minutes for January 4, 2001 and January 18, 2001.

MICHAELIS "We can take these separately or at the same time."

MARNELL "I have some changes for the January 4 meeting. I have them written and will give them to the secretary."

WARREN "I also gave her a couple of changes for the January 4 meeting."

GAROFALO "And I have one. I will give it to her, too."

MOTION: That the minutes for January 4, 2001 be approved as amended, and that the minutes for January 18, 2001 be approved as submitted.

JOHNSON moved, **HENTZEN** seconded the motion, and it carried unanimously (9-0).

2. Consideration of Subdivision Committee recommendations

MCKAY "On Item 2/1, I have a conflict of interest and will be abstaining."

2/1. SUB 2000-30 – Revised final plat of AUBURN HILLS 11TH ADDITION, located east of 151st Street West, north of Kellogg Drive.

- A. The Applicant shall guarantee the extension of City water and sanitary sewer to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. An off-site drainage easement and cross-lot drainage easement are required.
- D. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- E. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- F. The township needs to be added to the surveyor's certification.
- G. Lot 2, Block 2 does not conform to the 50-foot lot width requirement at the front property line. A building setback should be platted at a minimum of 50 feet measured from the side lot lines. City Fire Department has required a fire hydrant placed at the front of this lot. The building setback has been platted as requested.
- H. The Applicant shall guarantee the paving of the proposed interior streets.
- I. The 10-ft easement dimension on Lot 3, Block B, needs corrected.
- J. City Fire Department should comment on the length of Sandwedge Circle (700 ft), which exceeds the 600 ft maximum for a cul-de-sac. City Fire has approved this street length with the addition of a second point of access. In the event the second point of access does not occur through Fawnwood, the northern segment of Fawnwood abutting this plat should be vacated.

- K. Block B shall be revised to "Block 1".
- L. Based upon the platting binder, property taxes are still outstanding. Before the plat is scheduled for City Council consideration, proof shall be provided indicating that all applicable property taxes have been paid.
- M. Since this plat proposes the platting of narrow street right-of-way with adjacent 15-foot street, drainage and utility easements, a restrictive covenant shall be submitted which calls out restrictions for lot owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- N. The platting binder indicates three parties holding a mortgage on the site. All of these party's names must be included as signatories on the plat, or else documentation provided indicating that such mortgages have been released.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.
- P. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional utility easements.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

MICHAELIS "Is there anyone here to speak on this item?"

Subdivision Committee item 2/1 was approved subject to the Subdivision Committee recommendations. **HENTZEN** moved, **GAROFALO** seconded the motion, and it carried unanimously (9-0-1).

Lopez arrived at the meeting at 1:35 p.m.

3/1. VAC2001-00001 - Request to vacate an alley right-of-way, described as:

East-west alley running behind Lots 5,6,7,8,9,10,11 of Peter's Subdivision of Lot 17 in Mathewson's First Addition; and the east 96 5/5 feet and south 135 feet of Lot 15; the west 48 1/3 feet and south 135 feet of Lot 15 of Mathewson's First Addition, all to the City of Wichita, Sedgwick County, Kansas. Generally located north of Douglas, it is the only alley (running east to west) that connects Cleveland and Indiana Streets, between Douglas and 1st Street.

REASON FOR REQUEST: Applicant wants to incorporate the alley into Old Town Auto (display/sales), located between Douglas and the alley.

CURRENT ZONING: The zoning of the subject property is LI Light Industrial. The zoning of the properties to the north, east, south, and north is LI Light Industrial

Applicant wants to incorporate the alley into Old Town Auto (display/sales), located between Douglas and the alley. Currently there is a solid fence (metal with barbed wire on top) that runs along the northern end of Old Town Auto and the south side of the alley. Old Town Auto Mechanics occupies Lots 5 & 6 (stacked north to south on top of each other) on the northeast side of the side of the alley. The Old Town Auto Mechanics (the Mechanics building) building is set back from the alley and has 10 bay doors that open onto the alley. The Applicant proposes to remove the section of fence that is between the Mechanics building (on the north side of the alley) and the display/sales area (Old Town Auto) along the southeast side of the alley, close off the alley and thus allowing controlled access between the two areas.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time February 2, 2001, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described alley right-of-way, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

Therefore, the vacation of alley right-of-way described in the petition should be approved subject to the following conditions:

1. The alley shall be retained as a utility easement for existing private and public utilities located in it. Another 5-ft (width of the length of the easement) shall be obtained from the applicant to upgrade the utility easement to current City standards. The applicant shall provide a dedication providing the easement and the additional 5-ft of width for the length of the alley.
2. The applicant shall coordinate with the Fire Department any access issues prior to consideration by the City Council.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

1. The alley shall be retained as a utility easement for existing private and public utilities located in it. Another 5-ft (width of the length of the easement) shall be obtained from the applicant to upgrade the utility easement to current City standards. The applicant shall provide a dedication providing the easement and the additional 5-ft of width for the length of the alley.
2. The applicant shall coordinate with the Fire Department any access issues prior to consideration by the City Council.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.

BILL LONGNECKER, Planning staff "This is a request to vacate an alley right-of-way. The alley is located north of Douglas and runs east/west between Cleveland and Indiana Streets. The applicant wants to incorporate the alley into Old Town Auto (display/sales) located between Douglas and the alley.

The Subdivision Committee recommended approval of this vacation request based on 3 criteria. 'The alley shall be retained as a utility easement for existing private and public utilities located in it. The Public Works Department requested an additional 5-foot of width to run the length of the existing utility easement. This will upgrade the utility easement to current city standards of 20 foot per utility easement. The applicant shall provide a dedication providing the easement and the additional 5 foot'.

Item 2 is 'any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant'.

The third consideration that they have is that 'the Fire Department shall coordinate with the applicant any access issues to consideration by the City Council'. I spoke with Mark Jenkins of the Fire Department earlier this afternoon. He assured me that he will be getting with the applicant and going over that. I believe that is mainly about access for the Fire Department. Are there any questions?"

MICHAELIS "Are there any questions of staff?"

GAROFALO "I have one question. Is this alley an open alley where the other people use it? Do you know?"

LONGNECKER "Currently, it is an open alley. Old Town Auto Sales also has a 10-bay garage located on these two lots here (indicating). This area, all the way from the alley up to First Street is occupied by ABC Roofing. The only concerns I have heard expressed by ABC Roofing is that they are concerned that the alley would be closed off on both ends. Staff has assured ABC Roofing that if it was going to be closed off, everybody that was abutting the alley would have to be in agreement to that, and also, the Fire Department would have to approve anything like that.

So right now, the applicant is looking for controlled access from their sales lot here (indicating), to their garage here. At this point, I don't believe they are looking to close off the access on either side right now. But they are looking to have controlled access right through here, (indicating) from the garage over to the auto sales area."

GAROFALO "They can do that now, I would think. Can't they walk back and forth across the alley?"

LONGNECKER "Well, right now, they have a fence up and they are looking to tear the fence down. At one point, they were looking to go ahead and close off this end of the alley. That last comment was, again, that we are looking for the Fire Department to make a comment on the advisability of that. ABC Roofing, as I understand it, does not want this end of the alley closed off. But the applicant, again, was contemplating at one point a closing off of this end of the alley so they could just have controlled access from their sales to their garage. They believed that by closing that off, they would have a safer access. Right now, the applicant has a metal fence running along the length of the south side of the alley between the sales unit and the alley itself."

GAROFALO "Does the roofing company use the alley quite a bit? Do they use access right off onto their property?"

LONGNECKER "The roofing company has access off of First Street up here and Indiana Street. In talking to the individual that owns this property that ABC Roofing is located on, their use of this alley is infrequent. They also have a fence lined up on the alley. It is a chain-link fence."

Coulter arrived at the meeting at 1:43 p.m.

WARREN "I think you failed to give testimony to the fact that this applicant, as I recall, in the Subdivision Committee meeting agreed to put an emergency gate there on the west end of that alley if the Fire Department wanted it."

LONGNECKER "Yes, sir, that is correct."

KROUT "Bill, did ABC Roofing sign the application, since they are abutting this alley?"

LONGNECKER "I would have to look. They were notified of this public hearing."

MILLER "They would need to be an applicant. All owners abutting the property have to be an applicant."

LONGNECKER "That is on the application."

MICHAELIS "Any further questions of staff? Okay, thank you. May we hear from the applicant?"

JAY SWANSON "I am representing the Old Town Auto Plaza. As a practical matter, gentleman, the alley has three telephone poles in it that are almost a protrusion in that alley, and therefore it is very difficult for a truck to drive down that alley. Cars can go up and down there. Our idea is to open that fence and put a temporary gate across where we can get to our garage, but not on each end. In the middle there where we can get to our mechanics."

MICHAELIS "Are there any questions of the applicant? All right. Thank you, Mr. Swanson. Is there anyone in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition? Seeing none, we will bring it back to the Commission."

MOTION: That the item be approved, subject to staff comments.

JOHNSON moved, **WARREN** seconded the motion.

GAROFALO "I kind of think this may be a little premature to approve this. The Fire Department hasn't commented on it."

WARREN "The Fire Department was in the Subdivision meeting."

GAROFALO "They were? I thought Bill told us that they had to approve it. Have they approved it?"

WARREN "Yes."

LONGNECKER "The Fire Department still wanted to go out. They hadn't gone out and looked at the site yet. The recommendation by the Subdivision Committee was prior to the City Council that the Fire Department resolves any issues of access, prior to consideration by the City Council.

I talked to Mr. Jenkins this afternoon on his cell phone, and at this point, he had not gone out there. I reminded him that this was part of the conditions that were on this vacation request. He assured me that he would be there sometime within the next week to get this done."

PLATT "I specifically asked the Fire Department representative at the Subdivision Committee meeting if he wanted us to hold up the vacation, and he said no."

MICHAELIS "Okay."

VOTE ON THE MOTION: The motion carried unanimously (12-0).

Barfield arrived at the meeting at 1:50 p.m.

JERRY MICHAELIS, Acting Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions, which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning and vacation items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

Zoning:

4a. Case No. ZON2001-00009 – K.T. Partnership and Todd Parker (owner); Keith Parker (agent); Savoy Ruggles and Bohm, c/o Randy Johnson (agent) request a zone change from "SF-6" Single-Family Residential; "SF-20" Single-Family Residential to "LC" Limited Commercial and "GO" General Office; on property described as:

LC ZONING DESCRIPTION

That part of the SE 1/4 of Sec. 15, Twp. 27-S, R-2-E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the S.E. Corner of said SE 1/4; thence S 89 degrees 02'54"W, along the south line of said SE 1/4, 600 feet; thence N 00 degrees 57'30"E, parallel with the east line of said SE 1/4, 60 feet for a place of beginning; thence S89 degrees 02'54"W, 790.02 feet; thence N 00 degrees 57'06"W, 348.53 feet; thence N 60 degrees 45' 25"E, 153.38 feet; thence N 00 degrees 49'49"W, 82.38 feet; thence S 89 degrees 10'11"W, 105.11 feet; thence S 33 degrees 30'16"W, 121.28 feet; thence S 54 degrees 56'18"W, 109.53 feet; thence S 17 degrees 09'28"W, 118.51 feet; thence S 89 degrees 02'54"W, 129.03 feet; thence N 24 degrees 00'27"W, 102.57 feet; thence N 59 degrees 46'53"W, 166.30 feet; thence N 07 degrees 17'12"W, 332.51 feet; thence N 00 degrees 49'49"W, 154.29 feet to a point on the south line of the north 1643 feet of said SE 1/4; thence N 89 degrees 10'11"E, along the south line of the north 1643 feet of said SE 1/4, 1251.18 feet to the westerly line of the K-96 Bypass right-of-way as condemned in Case No. 88C 4045; thence S 45 degrees 07'33"E, along said

westerly line, 146.95 feet; thence S 48 degrees 35'43"E, and continuing along said westerly line, 452.15 feet to a point 600 feet north of the south line of said SE 1/4; thence S 89 degrees 02'54"W, 329.52 feet to a point 600 feet west of the east line of said SE 1/4; thence S 00 degrees 57'30"E, parallel with the east line of said SE 1/4, 540 feet to the place of beginning.

AREA 1,089,400.2 Square Feet 25.01 Acres

GO ZONING DESCRIPTION

That part of the SE 1/4 of Sec. 15, Twp. 27-S, R-2-E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the S.W. Corner of said SE 1/4; thence N 00 degrees 57'32"W, along the west line of said SE 1/4, 60 feet for a place of beginning; thence N 00 degrees 57'32"W, 954.24 feet to a point on the south line of the north 1643 feet of said SE 1/4; thence N 89 degrees 10'11"E, along the south line of the north 1643 feet of said SE 1/4, 569.94 feet; thence S 00 degrees 49'49"E, 259.72 feet; thence S 32 degrees 48'38"W, 88.73 feet; thence S 10 degrees 02'20"W, 96.31 feet; thence S 14 degrees 45'02"E, 303.58 feet; thence S 27 degrees 24'41"E, 84.79 feet; thence S 70 degrees 09'31"E, 90.02 feet; thence N 89 degrees 02'54"E, parallel with the south line of said SE 1/4, 177.22 feet; thence S 00 degrees 57'06"E, 122.32 feet to a point 60 feet north of the south line of said SE 1/4; thence S 89 degrees 02'54"W, 873.16 feet to the place of beginning.

AREA 568,045.2 Square Feet 13.04 Acres

AND

- 4b. **CUP2001-00005** – K.T. Partnership and Todd Parker (owner); Keith Parker (agent); Savoy Ruggles and Bohm, c/o Randy Johnson (agent) request the creation of KTP Center Addition C.U.P., on property described as:

The SE 1/4 of Sec. 15, Twp. 27-S, R-2E of the 6th P.M., Sedgwick County, Kansas, lying west of the K-96 Bypass right-of-way as condemned in Case No. 88C-4045, except the north 1643 feet thereof, and except the right-of-way for Central Avenue and 127th Street East, described as that part of the SE 1/4 of Sec. 15, Twp. 27-S, R-2-E of the 6th P.M., Sedgwick County, Kansas, described as beginning at the S.E. Corner thereof; thence S 89 degrees 02'54" W, along the south line of said SE 1/4, 1791.56 feet to a point 859.88 feet east of the S.W. Corner of said SE 1/4; thence N 00 degrees 57'32" W parallel with the west line of said SE 1/4, 60 feet; thence N 89 degrees 02'54" E 1441.55 feet to a point 350 feet west of the east line of said SE 1/4; thence N 80 degrees 37'03" E, 101.12 feet to a point 75 feet north of the south line of said SE 1/4 and 250 feet west of the east line of said SE 1/4; thence N 89 degrees 02'54" E, 175 feet to a point 75 feet west of the east line of said SE 1/4; thence N 00 degrees 57'30" W, parallel with the east line of said SE 1/4, 175 feet; thence N 13 degrees 04'41" E, 103.08 feet to a point 50 feet west of the east line of said SE 1/4 and 350 feet north of the south line of said SE 1/4; thence N 00 degrees 57'30" W, parallel with the east line of said SE 1/4, 48.96 feet to the westerly line of the K-96 Bypass right-of-way as condemned in Case No. 88C-4045; thence N 89 degrees 02'30" E, 50 feet to the east line of said SE 1/4; thence S 00 57'30" E, along the east line of said SE 1/4, 398.97 feet to the place of beginning, and except that part of the SE 1/4 of Sec. 15, Twp. 27-S, R-2E of the 6th P.M., Sedgwick County, Kansas described as commencing at the S.E. Corner of said SE 1/4; thence S 89 degrees 02'54" W, along the south line of said SE 1/4, 75 feet; thence N 00 degrees 57'30" W, parallel with the east line of said SE 1/4, 75 feet for a place of beginning; thence N 00 degrees 57'30" W, 175 feet; thence S 89 degrees 02'54" W, 200 feet; thence S 00 degrees 57'30" E, 178.75 feet; thence N 80 degrees 31'03" E, 25.28 feet; thence N 89 degrees 02'54" E, 175 feet to the place of beginning, and except that part of the SE 1/4 of Sec. 15, Twp. 27S, R2E of the 6th P.M., Sedgwick County, Kansas, described as commencing at the S.E. Corner of said SE 1/4; thence S 89 degrees 02'54" W, along the south line of said SE 1/4, 75 feet; thence N 00 degrees 57'30" W, parallel with the east line of said SE 1/4, 75 feet for a place of beginning; thence N 00 degrees 57'30" W, 175 feet; thence S 89 degrees 02'54" W 200 feet; thence S 00 57'30" E, 178.75 feet; thence N 80 degrees 31'03" E, 25.28 feet; thence N 89 degrees 02'54" E, 175 feet to the place of beginning. Generally located on the northwest corner of 127th Street East and Central Avenue.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "SF-6" Single-Family Residential to "GO" General Office on a 19.17-acre unplatted tract located south of 37th Street North and approximately ½ mile east of Ridge Road. The applicant indicates that the "GO" General Office zoning is requested to permit future development of the site with office uses. The applicant proposes to plat the subject property as part of the Ridge Port North 4th Addition, which is scheduled to be heard by the Subdivision Committee at their March 1, 2001 hearing.

The surrounding area is on the fringe of the developing urban area for Wichita, with much of the land in the area still used for agriculture. The properties north and east of the site are zoned "SF-20" Single-Family Residential and are used for agriculture. The property northeast of the site is zoned "SF-20" Single-Family Residential and is used for sand and gravel extraction. The properties south and southeast of the site are zoned "SF-6" Single-Family Residential and are proposed for the future development of single-family residences in the Ridge Port North 4th Addition. Most of the property west of the site is zoned "GO" General Office and is currently being developed with medical offices. The property west of the northern portion the site is zoned "SF-6" Single-Family Residential and is developed with a farm-related residence and outbuildings.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-20" Agriculture; sand and gravel extraction
SOUTH: "SF-6" Undeveloped
EAST: "SF-20" Agriculture
WEST: "SF-6" & "GO" Farm-related residence; developing medical offices

PUBLIC SERVICES: The site has access to 37th Street North, an unpaved section-line road. There are no current traffic volumes available and the 2030 Transportation Plan does not provide an estimate of future traffic volumes for this segment of 37th Street North. Planning staff estimates that traffic volumes on 37th Street North will be less than 5,000 vehicles per day in 2030. Planning staff will recommend that the applicant guarantee paved access to their property at the time of platting. Other off-site improvements related to traffic, drainage, etc. also may be recommended at the time of platting. Public water and sewer service are available to be extended to the site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Office" development. The "Office" category provides for office developments that furnish business, finance, insurance, real estate, medical, and other professional services usually permitted in office zoning districts. As proposed, the request for "GO" General Office zoning on the site conforms to the Land Use Guide.

RECOMMENDATION: Planning staff finds that the subject property is appropriate for office development; however, the "GO" General Office zoning district also permits the highest density (75.1 units per acre) of multi-family development. In the opinion of planning staff, the site does not have sufficient access and is not appropriately located in relation to surrounding properties for very high-density multi-family development. Therefore, planning staff is recommending a protective overlay to limit the density of multi-family development on the site. Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting within one year and subject to the following provision of a Protective Overlay District:

1. Residential development shall be limited to a maximum density of 17.4 dwelling units per acre.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is on the fringe of the developing urban area for Wichita, with much of the land in the area still used for agriculture. The properties north and east of the site are zoned "SF-20" Single-Family Residential and are used for agriculture. The property northeast of the site is zoned "SF-20" Single-Family Residential and is used for sand and gravel extraction. The properties south and southeast of the site are zoned "SF-6" Single-Family Residential and are proposed for the future development of single-family residences in the Ridge Port North 4th Addition. Most of the property west of the site is zoned "GO" General Office and is currently being developed with medical offices. The property west of the northern portion the site is zoned "SF-6" Single-Family Residential and is developed with a farm-related residence and outbuildings.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The site is suitable for single-family residential uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommended provisions of a Protective Overlay and the existing regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code, which should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Office" development. The "Office" category provides for office developments that furnish business, finance, insurance, real estate, medical, and other professional services usually permitted in office zoning districts. As proposed, the request for "GO" General Office zoning conforms to the Land Use Guide.
5. Impact of the proposed development on community facilities: Impacts on community facilities will be addressed at the time of platting.

GOLTRY "This is a re-hearing of this case on a 51-acre tract, which is approximately 60 percent 'LC' Limited Commercial and 40 percent 'GO' General Office at the northwest corner of 127th Street East and Central. At the previous Planning Commission meeting, we discussed this case and there were several small items that still needed to be discussed and the one primary item that still needed resolution and discussion was the idea of providing connectivity to the residential subdivision to the north.

Staff and the applicant for this CUP, as well as an agent for the subdivision to the north, have met and the applicant has agreed to provide connectivity in the form of a street that would be located along the boundaries between these two 'GO' parcels (indicating at Parcels 1 and 3) and these two 'GO' parcels (Parcels 2 and 4) and then would connect with the Balthrop 4th Addition to the north.

The design standards for the street would be a 32-foot wide right-of-way coupled with 29-foot back-to-back, curb-to-curb width, and then it would have 15-foot utility and drainage easements on either side of the right-of-way. In the areas where there would be drainage going on, they would not be able to use the property for landscaping and parking purposes, but the idea was that in the area that is not used for drainage, this area strictly used as a utility easement could be treated as other utility easements are throughout the city, and that is that they can be places where you can think about putting some of your parking requirements.

I think that was the major issue that required looking at between staff and the applicant and that was the resolution reached on that item. That covers, if you look at Page 2 of your supplemental memo that covers Item B-1. I will go briefly, now, through the other changes.

In the recommendations of staff from the first meeting, that was, in terms of access openings, there would be 5 points of access and I will try to show them to you as we go. There would be 1 point of access between Parcels 8 and 9; there would be another point of access here (indicating) that would be across from Garnett. The major opening to Parcel 7, the possible grocery store parcel; one opening on the eastern edge of this parcel (Parcel 2). We have said within the eastern 100 feet because we were trying to keep 350 feet from the 29-foot street here for a good stopping distance length. There may be some drainage issues that the applicant has just discussed with me today about the need to perhaps extend that slightly more than 100 feet, they were thinking. I know our concern was to keep a separation of 350 feet between the street and that drive opening. And then, the last point of access is one on 127th Street, just after you get past the bridge structure over K-96.

I would point out that on the opening for Parcel 11, this opening here and this opening here (indicating) may be subject to the situation where medials will be constructed in the future as traffic increases on Central and were that to be the case, those would become right/in, right/out only locations. So we did ask, that since there is the potential for that to happen that it would be so notated on the CUP so that anyone purchasing those properties would be aware of the fact that at a future date if traffic warranted it, these may become right/in, right/out only.

Skipping down to Item No. 4 on gross floor area, they had requested 35 percent initially. We had requested 20 percent. A compromise situation is 25 per cent, which is slightly less than the CUP to the south and slightly more than the office uses that are to the west. So it is in between. The maximum height of buildings be reduced to 40 feet. That is what they initially requested, and upon rethinking it, we aren't opposed to the idea of taller buildings. Then, for the buildings along K-96, they would be 75 feet. Then the other change is in Item No. 8 about General Provision No. 6, to allow two 30-foot signs, one on 127th Street and one on Central. Those are the changes.

The DAB heard this case on Monday evening and voted to recommend approval of it. I don't believe there was anyone present at the DAB meeting to speak on behalf of the case except for the applicant. I believe you have that DAB recommendation at your chair. I will stand for any questions."

GAROFALO "Donna, on the access on 8 and 9, the lots, or is it 9 and 10, or what?"

GOLTRY "It is 10 and 11."

GAROFALO "Well, is there a joint access there for 10 and 11?"

GOLTRY (Indicating) "There is an access point right here across from this driveway that is on DP-247."

GAROFALO "So that is not a joint access?"

GOLTRY "It is a cross-lot access and then there is access here (indicating at Parcel 10)."

GAROFALO "Why do they need that other one if there is a cross-lot?"

GOLTRY "They felt they needed the other one. We did try to work on reducing that. I believe the applicant has the redrawn CUP updated from this, pretty much ready today."

KROUT "I think the difficulty is trying to work when you have an undivided street and you have already agreed to locate access on one side of the street, and then you want to either line up the access or separate it adequately if you were to move a lot line, you would create a lot that wasn't as marketable because it is too narrow. If you leave the lot line where it is, then an assured access line would be offset, but not offset enough to work. So in this case, we thought a better solution was to allow the additional access point, but make sure that the driveways were lined up. And realizing that it might become right turn only in the future."

BARFIELD "Donna, on No. 9, why is that necessary?"

GOLTRY "Are you speaking of Item No. 9? Okay. Because they brought the request there is to have an additional tree requirement along the northern property where they are in close proximity to residential lots that are right along here (indicating), particularly when you consider the potential heights of 40 feet of your buildings. That is 5 feet higher than is allowed in the adjoining areas by having a stronger tree buffer along that area. That will help mitigate any conflicts

between the residential and the office of the residential and the commercial land use. That was the reason staff requested that.

Oh, excuse me. I have that for No. 7 only. I stand corrected. No. 7 would be this one (indicating). We originally asked, last time, for 35 feet on those two parcels, which were adjacent to the residential area. I am glad you pointed that out. That was an omission on my part."

WARREN "But those are General Office, aren't they?"

GOLTRY "Those are General Office to 40 feet—these two. This is also 40 feet (indicating), but this is 'LC', so we had asked for the additional buffer right along that area. You can project that that will probably be the backs of commercial buildings like the parts where the dumpsters are and what-not, so it would be good to have the extra buffer."

JOHNSON "The 32-foot right-of-way, will that be a public street or a private drive?"

GOLTRY "A public street."

JOHNSON "City maintained?"

GOLTRY "Yes."

MICHAELIS "Are there any further questions of staff? Thank you, Ms. Goltry. Can we hear from the applicant, please?"

KEITH PARKER "Mr. Chair, members of Commission, I am appearing on behalf of the applicant. As Donna said, we have had several meetings with the staff, with Traffic Engineering, and with the owners of the property to the north, and we have agreed on the circulation from the north to allow the residential traffic through this area. I think this is a good solution. We agreed with the other staff requirements. I would be glad to answer any other questions you might have."

MICHAELIS "Are there any other questions of Mr. Parker? Okay, thank you, Mr. Parker. Is there anyone in the audience wishing to speak in favor of this item? Is there anyone wishing to speak in opposition to this item? Seeing none, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is on the fringe of the developing urban area for Wichita, with much of the land in the area still used for agriculture. The properties north and east of the site are zoned "SF-20" Single-Family Residential and are used for agriculture. The property northeast of the site is zoned "SF-20" Single-Family Residential and is used for sand and gravel extraction. The properties south and southeast of the site are zoned "SF-6" Single-Family Residential and are proposed for the future development of single-family residences in the Ridge Port North 4th Addition. Most of the property west of the site is zoned "GO" General Office and is currently being developed with medical offices. The property west of the northern portion the site is zoned "SF-6" Single-Family Residential and is developed with a farm-related residence and outbuildings. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "SF-6" Single-Family Residential, which accommodates moderate-density, single-family residential development and complementary land uses. The site is suitable for single-family residential uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommended provisions of a Protective Overlay and the existing regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code, which should limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the 1999 Update to the Comprehensive Plan identifies this area as appropriate for "Office" development. The "Office" category provides for office developments that furnish business, finance, insurance, real estate, medical, and other professional services usually permitted in office zoning districts. As proposed, the request for "GO" General Office zoning conforms to the Land Use Guide. Impact of the proposed development on community facilities: Impacts on community facilities will be addressed at the time of platting.) I move that we recommend to the governing body that the request be approved, subject to platting within one year and subject to the following provision of a Protective Overlay District:

- A. APPROVE the zone change (ZON2001-00009) to "GO" General Office for Parcels 1-4 and 6, and "LC" Limited Commercial for Parcels 5 and 7-14, subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-255), subject to the following conditions:

1. A 32-foot right-of-way with 29-foot back-to-back street shall be provided between Parcels 1 and 3 and Parcels 2 and 4. This street shall connect with a t-shaped street extending south from Tipperary located between Lots 5 and 6, Block 3, Balthrop 4th Addition, in lieu of the stubbed street further to the east (Woodridge). Drainage and utility easements that are 15 feet in width shall be dedicated along each side of the right-of-way. Those portions of the easements not required for drainage purposes may be used for site-related landscaping and parking purposes so long as it does not interfere with the other utility easement requirements.
2. Access openings shall be limited to the following:
 - a) A major opening shall be located between Parcel 8 and Parcel 9 on Central as shown on the proposed C.U.P.
 - b) Parcel 2 shall be allowed one opening on Central located on the eastern 100 feet of the parcel.
 - c) Parcel 10 shall be allowed one opening on Central located across from Garnett Avenue.
 - d) Parcel 11 shall be allowed one opening on Central located across from the major opening on DP-247 127th Retail Center. A notation shall be made on the C.U.P. that this opening may be subject to construction of a medial along Central at some point in the future if warranted by traffic conditions. This would cause the opening to become a right-in/right-out only point of access.
 - e) An opening on Parcel 7 located between Parcel 11 and Parcel 12 on 12th Street East shall be located as shown on the proposed C.U.P. A notation shall be made on the C.U.P. that this opening may be subject to construction of a medial along Central at some point in the future if warranted by traffic conditions. This would cause the opening to become a right-in/right-out only point of access.
3. Transportation improvements shall include a center left-turn lane along Central for those segments where it is not already constructed and a right-turn decel lane to serve all openings.
4. Gross floor area shall be reduced to 25 % for Parcels 1-4 and 6, and 30 % for Parcels 5 and 7-14.
5. Maximum building heights shall be reduced to 40 feet for all parcels except 12-14 that shall be permitted a maximum height of 75 feet.
6. General Provisions #4 and #5 shall be revised to state that building setbacks shall be 35 feet along exterior property lines per Article III, Sec. III-C.2.b(2)(a) of the Unified Zoning Code.
7. General Provision #7 shall be revised to add that the buildings shall be predominately earth-tone colors, with vivid colors limited to incidental accent. The parcels with residential style architecture shall employ materials and design features similar to residential uses, including use of brick, masonry, wood or composite siding; and a double-pitched roof with hipped or gabled ends with a minimum vertical rise of 4 inches for every twelve inches. Parking lots shall share similar or consistent lighting elements.
8. General Provision #6 shall be revised to restrict signs to monument style and a maximum of 20 feet in height, except one sign on Central that shall be permitted to be 30 feet in height and one sign on 127th that shall be permitted to be 30 feet in height.
9. General Provision #9 shall be revised to require a buffer at 1 and ½ times the rate specified in the Landscape Ordinance for the northern property line of Parcel 7 only.
10. Parking shall be in accordance with Article IV of the Unified Zoning Code.
11. A six (6) to eight (8) screening wall of brick, masonry, architectural tile or similar materials (not including wood or woven wire wall shall be constructed along property lines of the C.U.P. in conformance with the provisions of Article III, Sec. III-C.2.b(2)(d) of the Unified Zoning Code. This solid masonry wall shall be constructed of a pattern and color that is consistent with the building walls.
12. The parcel descriptions shall be clarified to indicate that Conditional Uses shall be allowed only if specifically reviewed and approved by amendment to the C.U.P.
13. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
14. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
15. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone

change shall not be published until the plat has been recorded with the Register of Deeds.

16. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-255) includes special conditions for development on this property.
17. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

MCKAY moved, **PLATT** seconded the motion, and it carried unanimously (12-0).

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5. **Case No. CON2001-00009** – David Allen (Owner/applicant); Sandy Roberts (agent) request a Conditional Use to allow a car wash described as:

Lot 2, Block A, Lofland Addition, generally located on the southwest corner of the Lark and Harry Drive intersection on property.

BILL LONGNECKER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant, David Allen, is requesting consideration and recommendation for a Conditional Use to allow a car wash on property zoned "GC" General Commercial. The property (1.04 acres) is described as Lot 2, Block A, Lofland Addition, located southwest of the Lark – US Highway 54 (Kellogg) intersection. Harry Drive fronts the north side of the property and separates it from US 54. The Burlington Northern – Santa Fe RR ROW (BN-SF RR ROW) borders the property on the south and separates it from residential (zoned SF-6 Single Family Residential) development. The Unified Zoning Code permits car washes in zoning districts "LC" Limited Commercial, "GC" General Commercial, "CBD" Central Business District, "IP" Industrial Park, "LI" Limited Industrial, & "GI" General Industrial, but requires a Conditional Use when the car wash is located within 200-foot of residential zoning.

David Allen is requesting consideration of the car wash to be used by his car lot (adjacent to the west on Lot 1, Block A, Lofland Addition) and the surrounding area. The proposed car wash will have 6 self-service wash bays (16-foot wide x 30-foot long), 4 vacuum cleaner units and 10 drying stalls along the front of the property and another 3 drying stalls on the east side. The self-service wash bays are shown to be 101-foot behind the property line. The applicant proposes to use masonry blocks for the walls of the car wash with metal trim around the top of it.

Currently the proposed site, Lot 2, is partially occupied by David Allen's car sales on the west side. This business also entirely occupies Lot 1, Blk A, Lofland Add., There is an outdoor storage area on north side of the proposed site, that has car parts on it. The section of the site that has the car lot on it has an asphalt surface. The eastern section and the northern section of the proposed site have no all weather surface on them. The northern section, with outdoor storage, has a 6-foot chain link fence around it on the south and east sides, with a 6-foot stockade fence on its north side. This section also has a double gate facing east onto Lark, with an unimproved ingress - egress. There is no curb and gutter along the northern and eastern edge of Lots 2 & 1. A ditch runs along the northern section of proposed site (Lot 2), where the outdoor storage area currently is located. The property from the northern end of the outdoor storage area to the Lark – Harry Drive Intersection is level with those roads. Lots 2 & 1, where adjacent to Harry Drive (their north border), are level with the road. There is a ditch between Harry Drive and US 54. There is no existing access onto the proposed site from Harry Drive. Harry Drive is confined to the area between Horton's Furniture (abutting David Allen's car lot; Lot 1 on the west side) to Lark. The applicant proposes to do a Lot Split of Lot 2, contingent upon recommendation of the Conditional Use.

The neighborhood to the west is zoned "GC" General Commercial and contains David Allen's (applicant's) car lot and next to it Horton's Furniture. The neighborhood to the northwest (across US 54) is zoned GC General Commercial and contains several car sales lots (Auto Worth & and Dodge Dealership) and the neighborhood to the northwest is zoned "SF-6" and developed single family residential on the northeast side. Properties on the east side (across Lark) it is zoned "GC" General Commercial and contains a Coastal Convenience store and a film processing shop. To the south it is zoned "SF-6" Single Family Residential and is developed residentially.

CASE HISTORY: There was a street name change from Harry Drive to Kellogg Drive on June 12, 1984. The change is not reflected on the current maps or the street sign at the location, thus the continued reference to Harry Drive. The City is negotiating with the applicant in acquiring ROW for the future redesign and reconstruction of US 54. The City needs to acquire a 25-ft x 25-ft triangle of land on the northeast corner of the proposed site, this would be a landscape area, as shown on the current site plan.

ADJACENT ZONING AND LAND USE:

NORTH: "GC" General Commercial & "SF-6" Single Family Residential: Several car sales lots & developed single family residential.

SOUTH: "SF-6" Single Family Residential: Developed single family residential.

EAST: "GC" General Commercial: Convenience store and photo development business

WEST: "GC" General Commercial: Auto sales lot and a furniture sales store.

PUBLIC SERVICES: The Lark – US 54 intersection lies approximately half way between two nearest intersections that have traffic counts. To the west is the 119th – US 54 intersection that has 21,027 average trips daily (ADT) on the east side of the intersection. To the east is the Maize – US 54 intersection that has 27,041 ADTs on the west side of the intersection. Traffic is increasing as it heads towards the Lark – US 54 intersection. Lark will not have access to US 54 after the redesign and reconstruction of US 54. There is no storm drainage in place at the applicant's site and the applicant will have to satisfy the Public Works Department in the manner that this is managed. The applicant proposes to use a well on the property for water; this must be reviewed by Public Works.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as industrial. The current zoning of the site is "GC" General Commercial. The Unified Zoning Code permits car washes in zoning districts "LC" Limited Commercial, "GC" General Commercial, "CBD" Central Business District, "IP" Industrial Park, "LI" Limited Industrial, & "GI" General Industrial, but requires a Conditional Use when the car wash is located within 200-foot of residential zoning.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The applicant shall submit a revised site plan giving dimension control of proposed building, wash stalls, vehicle circulation, solid screening, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards. In order to meet the landscaping code requirements the depth of the carwash will probably need to be increased
- B. The site of the car wash shall be developed and maintained in compliance with the adopted site plan, and Section III-D.6.f of the Unified Zoning Code. The permit plans shall be reviewed and approved by the Public works Department in regards to drainage.
- C. The applicant has one year from the time of approval to begin construction on the project.
- D. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood. The area around the Lark – US 54 intersection is zoned "GC" General Commercial when adjacent to US 54 and the development reflects this. However, behind this commercial development on both the north and south sides of US 54 there is some recent single-family residential development, as reflected in the zoning. The RR ROW to the south of the applicant's proposed site lies between the residential development and the applicant's proposed site.
2. The suitability of the subject property for the uses to which it has been restricted. The applicant's proposal for a car wash, to be used by his car lot and drive in business is appropriate, if the applicant can meet Staff recommendations.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Staff could find only one other car wash in the area, that being a single enclosed bay located at a Phillips 66 convenience store on the northeast corner of the Tyler – US 54 intersection. The proposed car wash could be used by the surrounding residential neighborhoods. In particular would be the ability of the applicant to meet the requirements of the review by the Public works Department in regards to drainage and street access
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan indicates this site is appropriate for "industrial" uses. Given the land uses, zoning and roadways adjoining this site, the request is in conformance with adopted location guidelines for commercial uses.
5. Impact of the proposed development on community facilities: Traffic generated by the proposed car wash and the site's proximity to the Lark – US 54 intersection must be reviewed by Public Works. Drainage is also a concern that must be addressed by the applicant according to comments from Public Works.

LONGNECKER "This is a request for a Conditional Use to allow a car wash that is on property that is located within 200 feet of a residential development. The property in question is Lot 2 here (indicating), just off of Lark Street and Harry Drive. The applicant's business is next door to the proposed car wash, and is a car lot. There is an automobile dealership directly across Kellogg from this. If you go further to the west, there is a Dodge Dealership. On the east side of Lark Street there is a Coastal Convenience store and gas station, and a photo processing business there. Also, to the northeast across Kellogg, there is a field which separates some single-family residential from Kellogg.

Setting on this property now is also a storage area for the applicant's business, the car sales lot next door. The applicant is proposing to do a lot split, contingent up upon recommendation of the car sales request. If that is the case, the applicant is proposing moving this stockade-type fence further back into this area here, re-establishing a smaller area for the outside storage area, and would also address the possible issue of getting enough land area here to develop the car lot to meet the requirements for landscaping, queuing and parking.

The residential properties are right behind Lot 2. There is a railroad track running between the proposed lot and the residential area. Harry Drive basically runs from Horton Furniture, which is right next to Mr. Allen's car lot, and there is access off of Kellogg there and then it comes to Lark and then goes to the Coastal and the photo area to the east and then it stops. Harry Drive was actually changed to Kellogg Drive; however it is not being reflected in the maps with the City, so we have to alert the folks in charge of changing the street signs that it still says Harry Drive.

Looking at Lark itself, there is going to be a redesign on US54 and that will cut off access from Lark and Kellogg at this point. This access road will extend on east of there. I am not quite sure what is going to happen there on that access, but Lark itself, when the re-design and reconstruction of US54 happens, will not have direct access onto Kellogg.

Looking at the applicant's request and how it conforms to plans and policies, currently, this is zoned 'GC'. The future land use plan shows recommended zoning to be Industrial. The staff feels that this is an appropriate use for this location, if the applicant can meet staff's recommendations. One of staff's recommendations is that we have a revised site plan. We have had two site plans given to us, but we need more dimension control, proposed buildings, wash stalls, vehicle circulation, solid screening, and ingress/egress. Right now, the only ingress there is is proposed for Kellogg; there is none shown. The applicant has an existing one onto his car lot right here (indicating). There is also an unimproved ingress/egress right here onto the salvage. Any ingress/egress would have to be approved by Traffic, the Public Works Engineers, to make sure that it conforms to our policies.

We also have drainage issues that Public Works would have to approve of how that was going to be handled. On landscaping, again, there is some question as to whether we have enough room to actually have this happen. The applicant has proposed moving this fence, which you can see right there, back to where this existing metal building is. Until we get some more dimensional control, we are not sure whether they can actually meet the landscaping requirements. So we just need some more dimensional control on this.

If the applicant can meet the requirements with the revised site plan, and also look at developing and maintaining it in compliance with the adopted site plan and meet the Public Works approval in regards to drainage, we feel like this is a site that the applicant can use. He is proposing to use it for his car lot here and also for the surrounding area.

We drove up and down Highway 54, and the nearest car wash we could find was on Tyler and Highway 54 at a Phillips station. It is an enclosed car wash. So as it stands, staff recommends approval of this Conditional Use, based on the four items that we have outlined, which are again the revised site plan, the car wash being developed and maintained in compliance with the adopted site plan, the permit plan being reviewed and approved by Public Works with regard to drainage, and the applicant has one year from the time of approval to begin construction on the project. Any violation of these violations of approval shall declare the Conditional Use null and void. Are there any questions?"

MICHAELIS "Are there any questions of staff?"

HENTZEN "The City is condemning some land along West Highway 54 for the Kellogg Highway. Most of it is on the north side until it gets to the Cowskin, but from Lark Street to 119th Street on the south side, I understand they are condemning some land for that highway improvement. What I am asking is, are they going to take any of this applicant's land for that highway?"

LONGNECKER "I am glad you brought that up, sir. The applicant, at the time of this being written up, is in negotiation with the City. The City needs to acquire a 25 x 25 triangle right here on the northeast corner of this property (indicating). I don't know what stage the negotiations are at this point, but after talking with Traffic, they were saying that what they needed to require off of this piece of property is a 25 x 25 triangle, and again, that would be located right off the northeast corner of the property.

With the site plan we have now, that would also basically wipe out a lot of the applicant's landscaping. So, yes, there are negotiations for a 25 x 25 triangle of the applicant's property."

MICHAELIS "Are there any other questions of staff? Thank you, Mr. Longnecker. Can we hear from the applicant, please?"

DAVE ALLEN "As far as the corner, that deal has already been done with the City. They have already bought it and they said we could use it for landscaping. They are just using it so people can see in order to turn off of the frontage road that they are going to take from 119th Street all the way to the airport. They just needed that so that people could see whenever they turned off of that frontage road onto Lark. That sale has already been completed.

The car wash we are wanting to put up front (indicating) right in this area. The actual structure is over 200 feet away from the property line of the residents, but the property line is not over 200 feet away. If you have any questions, I would be glad to answer them."

GAROFALO "As it is shown there, is that the closest residence, just to the south?"

ALLEN "Yes. Right here (Indicating). There are railroad tracks and then there are houses back in there.

GAROFALO "Oh, there are houses there?"

ALLEN "Right here. Right now. From their houses to the structure it is 205 feet, but from their property line to our property line it is not. That is why we are needing to get a Conditional Use."

GAROFALO "Then that aerial is kind of old, then."

ALLEN "Yes. This (indicating) is plumb full of houses now, just in 3 years. They were quite busy. Then, like he said, there is a Coastal here with semis coming in and out of it and it is open 24 hours a day. There is a stoplight here (indicating), which is Maize Road with jack brakes and all of that. We are not putting an automatic in, it is just a 6-bay, self-serve, facing Kellogg. So there are no blowers or anything like that, to make a lot of noise."

JOHNSON "How long have you had your car lot there at that location?"

ALLEN "We have been here for 6 years."

JOHNSON "Were there any of the homes to the south there at that time?"

ALLEN "No, sir."

MICHAELIS "Are there any further questions of Mr. Allen. Thank you, Mr. Allen. Is there anyone else in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to this application? Please come forward, sir."

BRIAN SCHAW "I live at 1611 South Lark Court, which is in the houses to the south of Mr. Allen's car lot. I have been chosen by that first block to come and speak in opposition. The main concerns of the neighborhood is the noise due to vacuums and cars coming in and after the kids get done washing their cars, then turning their stereos up while they are chamoising their vehicles off.

Traffic is a concern. I am not sure when Lark is supposed to be shut down as far as direct access to Kellogg. Right now, turning off of Kellogg onto to Lark Lane can sometimes be very cumbersome, especially on weekends. I was talking to Mr. Allen before and his ingress and egress is going to have to be off of Lark, due to the Kellogg expansion, which we feel would cause traffic tie-ups until which time Lark's direct access to Kellogg is shut down.

Eleven out of the 19 homes on Block 1, Lark 5th Addition; have signed a petition against the car wash. I do have some photos of the property in question. In talking with Mr. Allen, he did state something about putting up an 8-foot privacy fence at the back of the property, right there (Indicating). Our homes are all along through here. They were all built in 1998."

MICHAELIS "If you want to enter your photos, we will have to retain them."

SCHAW "That's fine. At this time, I don't have anything else. Thank you for your time."

MICHAELIS "Are there any questions of Mr. Schawe?"

HENTZEN "Was that car lot there when you built your house?"

SCHAW "Yes, sir, it was."

HENTZEN "I have been driving that road for about 40 years now, and most of those businesses north of you have been there almost all of that 40 years."

SCHAW "Right. And that is not in question. When we purchased our land, we knew that Mr. Allen had the car lot; we knew that the train tracks were there, and the Coastal and all of that. We don't have any problem with all of that. It was the car wash that was in question."

HENTZEN "Did I understand you right that you thought that the vacuuming of the cars was going to make too much noise?"

SCHAW "I am here to speak for house numbers 1116 through 1119. That was the thing."

HENTZEN "Was there anything else other than the noise of the vacuums?"

SCHAW "The vacuuming and the music from the cars being chamoised off after they get done."

MICHAELIS "Thank you, sir. Is there anyone else wishing to speak in opposition to this? Seeing none, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood). The area around the Lark – US 54 intersection is zoned "GC" General Commercial when adjacent to US 54 and the development reflects this. However, behind this commercial development on both the north and south sides of US 54 there is some recent single-family residential development, as reflected in the zoning. The RR ROW to the south of the applicant's proposed site lies between the residential development and the applicant's proposed site. The suitability of the subject property for the uses to which it has been restricted. The applicant's proposal for a car wash, to be used by his car lot and drive in business is appropriate, if the applicant can meet Staff recommendations. Extent to which removal of the restrictions will detrimentally affect nearby property: Staff could find only one other car wash in the area that being a single enclosed bay located at a Phillips 66 convenience store on the northeast corner of the Tyler – US 54 intersection. The proposed car wash could be used by the surrounding residential neighborhoods. In particular would be the ability of the applicant to meet the requirements of the review by the Public works Department in regards to drainage and street access. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The plan indicates this site is appropriate for "industrial" uses. Given the land uses, zoning and roadways adjoining this site, the request is in conformance with adopted location guidelines for commercial uses. Impact of the proposed development on community facilities: Traffic generated by the proposed car wash and the site's proximity to the Lark – US 54 intersection must be reviewed by Public Works. Drainage is also a concern that must be addressed by the applicant according to comments from Public Works.) I move that we recommend to the governing body that the request be approved, subject to the following:

- A. The applicant shall submit a revised site plan giving dimension control of proposed building, wash stalls, vehicle circulation, solid screening, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards. In order to meet the landscaping code requirements the depth of the carwash will probably need to be increased.
- B. The site of the car wash shall be developed and maintained in compliance with the adopted site plan, and Section III-D.6.f of the Unified Zoning Code. The permit plans shall be reviewed and approved by the Public works Department in regards to drainage.
- C. The applicant has one year from the time of approval to begin construction on the project.
- D. Any violation of the conditions of approval shall declare the Conditional Use null and void.

HENTZEN moved **MARNELL** seconded the motion.

KROUT "In the past, we have had car washes that were much closer to residential neighborhoods. In fact, we had one with an automatic washer and dryer that was right on top of lots. This is a little bit of a different situation. It is more removed than some. But what we have found is the noisiest part of an operation is an automatic washer and dryer stall. Since the applicant has indicated that he is not planning to install that, I would suggest that you add that to a condition of approval."

LOPEZ "For clarification on the Conditional Use for the solid screening. In this particular case, is that requirement for a masonry solid screening?"

KROUT "No. Masonry is only required on CUPs that are over 6 acres. It would have to be a solid wood fence. You have occasionally required more screening or different screening material, but that is on a case-by-case basis."

HENTZEN "I checked last week with the Traffic Engineer at the City, regarding the improvements on Kellogg. I believe, in going over the Maize intersection, it is going to be a fly-over and the frontage road on the north, going west is going to be going west. The frontage road on the south is going to be going east. All I am saying is that I think that expansion is going to help us on getting the streets to feed in to Highway 54. So, it is not going to be a two-way street on each side of the highway. One of them is going to be going west and one of them is going to be going north."

GAROFALO "I would like to ask the applicant a question."

MICHAELIS "Mr. Allen, would you come back, please?"

GAROFALO "Are you planning to have this open 24 hours a day, seven days a week?"

ALLEN "Yes."

BARFIELD "Sir, would you tell me again, how far is the distance between the residential area and the car wash?"

ALLEN "It is 205 feet from the property line of the first house to the structure of the car wash."

BARFIELD "Would the screening then be where you pointed to where the structure is? Whatever the screening is going to be?"

ALLEN "No. Twenty feet back from the structure will be a fence."

WARNER "How much traffic, if any, is there on the railroad tracks?"

ALLEN "It is going to be abandoned, but I hear one or two a day. I don't live back there so I don't know how many comes through at night."

HENTZEN "I also talked to the City Engineer about when that railroad bridge be taken out that is over the Cowskin. They actually have it scheduled for 2002 to be removed and not replaced."

ALLEN "As far as the vacuums, they will be the farthest away from the houses. They will be closer to Kellogg; not behind the car wash."

GAROFALO "Would you consider reducing your hours of operation to, say 10 p.m. or something, with residents being as close as they are?"

ALLEN "Well, I would rather not. These are not cheap to build, and with the Coastal being open 24 hours a day, with cars and semis going through it, that is why I thought it would work quite well there."

MOTION: That the question be called.

HENTZEN moved, **MARNELL** seconded the motion.

MICHAELIS "Before we take a vote on this, I would like to ask anybody on the Commission, and on any other cases that come up today, if you have had any ex-parte contacts if you would please disclose them as the cases come up. Has there been on this particular case? Okay."

JOHNSON "Was there any discussion on the automatic?"

PLATT "Now, wait a minute. The question has been called."

MICHAELIS "Yes. We need to vote on the motion."

VOTE ON THE MOTION: The motion carried with 10 votes in favor (Lopez, Johnson, Michaelis, Warren, Marnell, Barfield, Coulter, Warner, McKay and Hentzen) and 2 in opposition (Garofalo and Platt). Osborne-Howes was not present.

MILLER "Did that include the prohibition on the automatic?"

PLATT "No. It was subject to staff comments."

JOHNSON "That is what I was just asking."

KROUT "Let me just say, for the record, that unless the Planning Commission wishes to reconsider, I think that that is an issue that is significant enough to bring to the City Council's attention, so I plan to appeal this if there isn't anyone in the notice area who is standing to appeal it. Maybe you could amend the motion and include it in the revised motion. You can change your recommendations today, but you can't after today."

JOHNSON "I guess that since that was being discussed, I thought that that was part of the motion. I don't know why we can't ask, once the motion has been re-read just to get a clarification."

HENTZEN "Let me tell you. The staff investigated this, recommended approval with conditions, and we come up here and approve it, and then the Planning Director wants to appeal it to the City Council. Now, what the hell are we doing up here, just practicing?"

MARNELL "If the maker of the motion would be agreeable to an amendment on the automatics, I would have no objection to making that change, as the second. I don't believe the applicant plans on putting an automatic in anyway."

HENTZEN "I could live with that, yeah."

AMENDED MOTION: I move that we recommend to the governing body that the request be approved, subject to the following:

- A. The applicant shall submit a revised site plan giving dimension control of proposed building, wash stalls, vehicle circulation, solid screening, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards. In order to meet the landscaping code requirements the depth of the carwash will probably need to be increased.
- B. No automatic car washes allowed.
- C. The site of the car wash shall be developed and maintained in compliance with the adopted site plan, and Section III-D.6.f of the Unified Zoning Code. The permit plans shall be reviewed and approved by the Public works Department in regards to drainage.
- D. The applicant has one year from the time of approval to begin construction on the project.
- E. Any violation of the conditions of approval shall declare the Conditional Use null and void.

MARNELL moved, **HENTZEN** seconded the motion, and it carried unanimously.
(12-0).

6. **Case No. CON2001-00004** – Paul W. Weigand (Owner/Applicant) request a Conditional Use to allow used car sales on property described as:

Lot 10, and Lot 11, Block E, Graber Addition, generally located on the northwest corner of Hydraulic and Wassall.

BILL LONGNECKER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant, Paul Weigand, is requesting consideration and recommendation for a Conditional Use to allow used car sales on property zoned "LC" Limited Commercial. The property (14,782.88 square feet) is described as Lots 10 & 11, Block E, Graber Addition, located on the northwest corner of the Wassall - Hydraulic intersection. Wassall fronts the south side of the property and Hydraulic fronts its east side. Single- family residential development abuts it on its north and west sides. The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning.

The applicant is requesting consideration of used car sales on this property, which contains a vacant 1,500 sq.-ft building to be used as office space and a concrete parking area where he proposes to display the used cars and provide parking for prospective buyers. The site has 4 existing entrances/exits (entrances); 2 on Wassall and 2 on Hydraulic. The applicant has stated that he will close off the 2 entrances that are closest to the Wassall – Hydraulic intersection, leaving the two farthest from the intersection open. This would leave the site with an entrance on Hydraulic and another on Wassall. The remaining entrances would line up with existing entrances of the businesses that are across from it on Wassall and Hydraulic; Louie's Liquor on the Hydraulic side and Quick Trip on the Wassall side. The site has two old light poles (without light fixtures attached) on it, one located on the southwest side of the site and the other on the northeast side of the site. The one on the northeast side of the site is damaged and will need repair or possibly removal. There is grass along the west and north sides of the site.

The neighborhood to the north is zoned SF-6 and has developed residential. There is a 6-ft stockade fence between the proposed used car lot and the residence abutting it on the north side. The neighborhood to the west is zoned TF-3 and is developed single family residential. There is a 6-ft. stockade fence that runs the width of the southwest lot abutting to the proposed site, the next lot north of this lot has no screening between it and the proposed site. On the east side (across Hydraulic) there is Louie's Liquor at the intersection, then north of it Shooter's, a billiards hall. North of these two businesses on the west side there are single family and multifamily residence. Development on the south includes a restaurant on the southeast side of the intersection and a Quick Trip on the southwest side of the intersection. Adjacent to these businesses are two small strip centers containing barber - beauty shops, sandwich shops, insurance businesses, a bingo hall, bars, and restaurants. Beyond these businesses to the Hydraulic – I 135 Loop, there are residence (both single family and 4-plex) and a warehouse – distribution developments

CASE HISTORY: The Graber Addition was entered on transfer record November 13, 1950. The BZA denied an application for a car sales lot on this site at their 07-24-84 meeting, recommending that this was not an appropriate site for the "LC" Limited Commercial zoning and the surrounding neighborhood.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|----------------------------------|------------------------------|
| NORTH: | "SF-6" Single Family Residential | Residential |
| EAST: | "LC" Limited Commercial | Liquor store, billiards hall |
| SOUTH: | "LC" Limited Commercial | Strip shopping centers |
| WEST: | "SF-6" Single Family Residential | Residential |

PUBLIC SERVICES: Hydraulic is a four-lane arterial street. The estimated traffic volume of (ADT) trips per day at the Hydraulic - Wassall intersection is 4413 ADTs on the west side, 9458 ADTs on the north side, 356 ADTs on the east side and 10042 ADTs on the south side. Water/sewer and other municipal services are provided to the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as Low Density Residential. The current zoning of the site is "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning. The Wichita – Sedgwick County Comprehensive Plan, Section 3, directs the location of auto related uses to appropriate areas: such as the CBD fringe, segments of Kellogg, established areas of similar development and areas where traffic patterns, surrounding land uses and utilities can support such development.

RECOMMENDATION: Based on the information available prior to the public hearing, MAPD staff recommends the application be DENIED. The Comprehensive Plan does not indicate that a used car lot would be appropriate for this area, there are not any other vehicle sales lots existing or allowed by zoning in the general vicinity. The commercial uses along this portion of Hydraulic are neighborhood serving and do not involve the outdoor display storage associated with vehicle sales.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The application area is zoned "LC," Limited Commercial. The "LC" district does not permit auto sales without a Conditional Use permit. The existing businesses in the neighborhood are local retail in character. A used car sales business would be out of character with these businesses. There are established residential developments adjacent to the site on the north and west sides. The proposed car lot would not compliment this residence. A location further south that would be in the warehouse – distribution center area would be more appropriate.
2. The suitability of the subject property for the uses to which it has been restricted: A permitted use for "LC" Limited Commercial development would be more appropriate for this site. Because of the location of the site on an intersection, it is doubtful if it will ever develop low density residential, as recommended by the Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan
3. Extent to which removal of the restrictions will detrimentally affect nearby property. Outdoor storage and display of vehicles is not consistent with the type of development existing at this intersection. Approval of this request will most likely open other sites nearby for additional vehicle sales lots and other "heavier" commercial uses. This site was an active gas station until the Quick Trip was developed.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The Unified Zoning Code requires a Conditional Use for vehicle and equipment sales, outside in "LC" Limited Commercial zoning. The Wichita Land Use Guide of the 1999 update to the Wichita – Sedgwick County Comprehensive Plan identifies this property as Low Density Residential. The current zoning of the site is "LC" Limited Commercial. The Wichita Sedgwick County Comprehensive Plan, Section 3, directs the location of auto related uses to appropriate areas: such as the CBD fringe, segments of Kellogg, established areas of similar development and areas where traffic patterns, surrounding land uses and utilities can support such development. The proposed car sales lot does meet these criteria. The nearest car sales lot is located on the Douglas Hydraulic Intersection.
5. Impact of the proposed development on community facilities: Municipal services are available to serve this site, and the proposed use should not generate any more traffic than other permitted uses.

If, however, the Planning Commission believes this is an appropriate use, staff recommends approval be subject to the following conditions:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of used cars. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
2. The applicant shall submit a revised site plan giving dimension control of display areas, vehicle circulation, solid screening, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards

3. The applicant shall install and maintain landscaping in accordance with the landscape plan submitted with this application. This will require the removal of paving along the sidewalks next to Hydraulic and Wassall.
4. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
5. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
6. There shall be no use of elevated platforms for the display of vehicles.
7. No amplification system shall be permitted.
8. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
9. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
10. The applicant shall erect and maintain a solid six-foot screening along the northern and western property lines that are adjacent to residential zoning and the existing residential development.
11. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

LONGNECKER "This is a request for a Conditional Use to allow a vehicle and equipment sales outdoors in Limited Commercial zoning. This type of use requires a Conditional Use consideration.

The property that has been proposed for this use is located on the northwest corner of Wassall and Hydraulic. The zoning across Hydraulic is also Limited Commercial. Both sides of Hydraulic, south of Wassall is Limited Commercial, and the property to the west and north is all Single-Family Residential zoning. The site has two existing curb cuts; one close to the Hydraulic/Wassall intersection and a further one. It also has two more curb cuts over on Wassall. One, again, close to the Hydraulic/Wassall intersection, and the other one lines up with the Quik Trip right across the road from it. That curb cut lines up with the business across the street, which is a liquor store.

Staff is recommending denial of this Conditional Use. We are looking at what is going on in this neighborhood and most of it is local retail in nature. We don't feel that the auto sales falls into character with what is going on in the neighborhood. We also found that there was a previous application for a car lot sales on these two lots back in July of 1984 that the BZA denied, recommending that it was not an appropriate site for that type of use, and also for the surrounding neighborhood.

The future Land Use Plan shows this property to become some type of residential zoning. Staff doesn't really feel like it will ever develop residential because of its location on the Wassall/Hydraulic intersection. We feel a more appropriate use would be something more in line with the character of the neighborhood, which, again, is primarily local retail. We have beauty shops, barber shops, restaurants, sandwich shops and a bingo parlor. Further down the road on Hydraulic, as you are heading towards I-235, there is a distribution warehouse on the east side that we feel like that zoning and that usage in that area would be more appropriate for the location of a car lot. Based on these considerations, staff is recommending that this application be denied because of the inappropriateness of the use and in consideration of what is going on in the neighborhood. Also, the fact is that staff drove from I-235 up to Douglas and the only other car lot we could find in the area is on the intersection of Douglas and Hydraulic. Going east and west on Wassall, we didn't find any other car lots either. In looking at the Wichita/Sedgwick County Comprehensive Plan, it directs the location of auto related uses to appropriate areas, such as the CBD fringe, segments of Kellogg, established areas of similar development. Again, we didn't see any similar development in this area. Areas where traffic patterns and surround land uses and utilities can support such development. Staff did not feel like the Conditional Use request for outside sales for this particular site met those criteria. Are there any questions?"

BARFIELD "Is that site presently vacant?"

LONGNECKER "Yes, sir."

BARFIELD "Do you know how long it has been vacant?"

LONGNECKER "No, sir."

WARREN "A long time."

GAROFALO "There is a sentence in the Findings No. 4 on Page 4 that I think need modified. The next to last sentence 'the proposed car sales lot does meet these criteria'. I think you meant does not meet these criteria."

LONGNECKER "That is a typo. I'm sorry."

BARFIELD "Are there any other questions of staff?"

BARFIELD "I have one other question. You mention here that the nearest car lot is located at Douglas and Hydraulic. Did you go to the south of this location?"

LONGNECKER "I drove down Hydraulic to I-235. There were no car lots located between the Hydraulic/Wassall intersection and I-235."

BARFIELD "I am thinking about MacArthur."

LONGNECKER "I did not go that far south, no, sir."

HENTZEN "You mentioned that a car lot was turned down in 1984. Do you know if that lot has been used for anything since then?"

LONGNECKER "At one point it was a gas station. I did not find out when the gas station went out of business, but just by talking to folks familiar with that area, when the Quik Trip came in across the street, it was vacant by that time. That is what I gathered."

HENTZEN "What I am getting at is if they haven't found something to do with it by now, what do they do with it now if we turn it down again?"

LONGNECKER "I think the applicant has another use that he was thinking about combining with the car lot. He was talking to me today, which was the first I had heard about that. I don't think he was considering separating the two uses. I will let the applicant present that to you."

MARNELL "Just north of this location is Pawnee?"

LONGNECKER "Yes, sir."

MARNELL "Are there not car sales right along Pawnee?"

LONGNECKER "Just north of this? No, sir, there is not. There are car repair and car parts businesses there, but on that intersection there were not car sales."

MARNELL "Not at the intersection, but along Pawnee."

LONGNECKER "I did not drive Pawnee east or west."

GAROFALO "That particular site has been used over the years since the service station went away with different little businesses that obviously didn't make it. I know one fellow had a telephone repair business for a while and there was some ceramic-type business in there once. I am pretty familiar with the neighborhood since I live to the south of it."

This gentleman said there was a car lot at Pawnee and Washington. A sales lot. I am not familiar with a sales lot at Pawnee and Washington, but we can discuss that later. That is what I wanted to mention."

BARFIELD "Did I understand you to say that if this were located across the street to the southeast it would be appropriate?"

LONGNECKER "To the southeast, there is a distribution warehouse complex—one of them being the 7-up distribution warehouse area. The zoning and use going on there, I consider to be more appropriate for a car lot. Now, it still does not meet the other criteria as far as being located in areas of similar use. Again, I don't quite know what kind of definition we are looking at as area."

Pawnee and Washington seems to be quite a ways off to me. I am not quite sure how you are defining the area there, but the only one I found—and again, I was going north and south, was Douglas and Hydraulic."

BARFIELD "Did you say that staff feels that this would be appropriate for residential, but you don't see the possibility of any residential development taking place there?"

LONGNECKER "The Comprehensive Plan calls for this property to be residentially zoned; however, I don't find it appropriate for residential. The intersection of Hydraulic and Wassall and the way it is developed, I think it is more appropriate for some type of commercial use, a local retail or something similar to what is going on right now on the other three sides of the intersection."

KROUT "If I could just supplement that. The Comprehensive Plan is a generalized map—a map of very small scale, so when you get down to one lot intersections of a mile on a major street, we are not going to show all of the commercial areas that area along there. If we had done a larger map, I am sure that we would have shown this as a commercial, so I think that Bill is giving you the literal interpretation that there is not a spot of red (commercial zoning) on the map, but I am

sure that this meets other criteria for a commercial intersection. I don't think the plan is meant to be interpreted that they really think this is suitable for residential use."

MICHAELIS "Are there any other questions of staff?"

LONGNECKER "I would like to add one more item. In the event that the member of the Commission find that this is an appropriate site for a car sales lot, staff has prepared the items that we would be looking to address so see that that would be developed in a way that it would be of a benefit to the neighborhood, and also the type of development that has been used in the past for car lots."

MICHAELIS "Thank you, Mr. Longnecker. Can we hear from the applicant, please?"

PAUL WEIGAND "I am the one who wants to put the car lot in there. If I may, what I have is copies of the letters that I sent to all of the people that this affected. Would it be permissible to pass these out?"

MICHAELIS "Yes. Just start them down at the end and we will pass them around."

WEIGAND "I have been in that south city area doing business right across the street for 12 years. I can still answer most of the questions that you asked before, and if anybody wants to ask any other questions.

I have the Shooters' Club across the street and I own the property where the liquor store is. I have always thought that this corner was ideal for a car lot. I have had a dealer's license for about 20 years. It has always appealed to me and I tried to buy that corner for 7 to 8 years. About a year ago, the lady decided that she wanted to sell it. I live about 6 blocks from there so I am pretty conscientious about my neighborhood. I want it to look good. I think a car lot is absolutely the ideal thing for this corner. There has been like 10 or 12 businesses in there. McGill Accosta was the person you were trying to think of. In fact, he was very instrumental in my being able to open Shooters. I needed the parking at that time. He allowed me to use that.

I want to make this look good. If you are familiar with the Shooters area, I take care of that. We are right on the border of a heavy industrial area, so I just don't feel like the disturbance that this car lot would make would be much at all. Right down the street at the corner of Pawnee and Hydraulic, we have a large parts store, and there is an automotive repair place and across the street from that, there is an oil change, or that is what it used to be. I think that is still what it is going to be.

At Washington and Pawnee, right in between Hydraulic and Washington is a car lot and several automotive repair places. I believe that at the car lot at the corner of Washington and Pawnee that there is a service shop there called Basics and Beyond. I believe that they have a dealer's license. I am not positive, but I think they do. There is a lot of activity in that area. There are a lot of people in the south city area that think of it as a little city. That is why they call it the south city. I think a little city ought to have a car lot.

Oh, the only response I got from the letter I sent out was from the people that were directly to the west. (Indicating) the people that live right here next to the fence that separates the property were the only ones that responded to my letter. I talked to this lady for 20 to 30 minutes and she was just all gung ho. She thought that would be good because she thought that would do the area good. She has seen me out picking up trash in the morning."

BARFIELD "On the application, it says 'vehicle and equipment sales, outdoors'. Staff mentioned that you had something else in mind."

WEIGAND "Oh, yes, yes, yes. I have had Shooters for years and I have been a pool player for years. I spend a lot of time at Shooters and I am all of the time getting people having people ask me about giving lessons. I am what is considered a recognized billiard instructor. Not quite to the certified level because that takes a lot of paper work. But I have been playing pool all of my life and I want to put the Billiard Academy of Wichita in the same building. The building is large enough for a couple of offices to sell cars and an area to have a pool table set up and the video cameras. I want to do that right. There isn't anything like that in Wichita and I think Wichita has a market for an 'official pool school', you might say. The college of pool knowledge."

BARFIELD "Well, you know that staff has recommended that if this is approved, it would only be for the sale of used cars."

WEIGAND "Yes, and I don't understand why something that would have been okay before wouldn't still be okay. That is what I am getting at. I don't know why they put that in there because first of all, I never talked to Bill about my idea. I had always had that plan. When I am talking about the pool school, there is not going to be any alcohol. So many people request that, but I just don't have the time, but I have people that I know....I have a professional pool player that works for me a Shooters a couple of nights a week, and I think it could work well. If you are sitting on a car lot and there is not much going on, it would be nice to have a pool table right there."

BARFIELD "When you say equipment sales, what do you mean?"

WEIGAND "I have no idea. I didn't request that. That was just put in there."

MICHAELIS "Mr. Miller, would you like to clarify this?"

MILLER "Yes. I just want to clarify that where it says 'in addition to uses permitted in the LC district, so a pool school would be permitted.'"

BARFIELD "Can you clarify why equipment sales is in there?"

MILLER "It is vehicle and equipment sales. That is a technical term."

WEIGAND "I can see the possibility of having a trailer or something, maybe, to sell."

LONGNECKER "That is simply the way it is listed in the usage. And you look at how that usage is broken down, and auto sales is one of those uses in equipment sales outdoors. So I just used the generic language right out of the zoning ordinance."

Now, as far as this extra use, the first that we talked about this was 15 minutes before the meeting. That is why the pool academy wasn't included in the staff report. That is where we are on that. This was something that Paul brought for me as a little different tweak to what he was doing."

WEIGAND "I never thought of it as being a problem."

LONGNECKER "With the parking considerations with that, and we have mixed uses with the car lot, so that is a whole different animal."

BARFIELD "Now, we show, at the present time, four openings. Are we talking about approving this with four openings?"

LONGNECKER "Right now, no. If this is approved, one of the things that Paul has spoken about and agreed to do is to shut off—put barriers up on the two curb cuts that are the closest to the intersection. So instead of the four that you have now, you would have the two that are the farthest away from the intersection, which would leave access to Hydraulic over on the west side and then Wassall down on the south."

MICHAELIS "Are there any further questions of the speaker?"

GAROFALO "On this letter, where did you distribute this letter?"

WEIGAND "To whom?"

GAROFALO "Yeah."

WEIGAND "I had to get a list from a certified real estate office of all of the property holders within 200 feet. I got a copy of that list and I mailed this letter to everybody that was on the list."

MICHAELIS "That would have been the notification area?"

KROUT "Yeah."

WEIGAND "Then I found out recently that that list needed to be revised because they did the research on just one lot and it should have been two and that extends it a little bit, so there were about 4 people that didn't get that letter."

GAROFALO "And what kind of response did you get?"

WEIGAND "Zero response except for the lady that lived right directly to the west of the property that I was most concerned about, actually. She called and we talked for a while and she said she was all for me. She hoped I would do well. I can't remember her name right now."

BARFIELD "Do you intend to do any repair work at this location?"

WEIGAND "Very minor."

BARFIELD "Do you understand that any repair work has to be done inside if this is approved?"

WEIGAND "I won't be changing starters or anything like that. Maybe putting bulbs in...very minimal stuff that I wouldn't need a mechanic to do."

MICHAELIS "Is there anyone in the audience wishing to speak in favor of this application? Is there anyone wishing to speak in opposition to this application? Seeing none, we will bring it back to the Commission."

MOTION: I move that we recommend to the governing body that the application be approved, subject to the following:

1. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of used cars. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
2. The applicant shall submit a revised site plan giving dimension control of display areas, vehicle circulation, solid screening, ingress and egress, parking areas, queuing areas, dumpsters, landscaping, signs, lighting and showing all easements and set backs for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards
3. The applicant shall install and maintain landscaping in accordance with the landscape plan submitted with this application. This will require the removal of paving along the sidewalks next to Hydraulic and Wassall.
4. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles so not encroach onto public right-of-way.
5. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons.
6. There shall be no use of elevated platforms for the display of vehicles.
7. No amplification system shall be permitted.
8. No outside storage of salvaged vehicles or parts shall be permitted in association with this use.
9. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
10. The applicant shall erect and maintain a solid six-foot screening along the northern and western property lines that are adjacent to residential zoning and the existing residential development.
11. The applicant shall continue the existing curb along Wassall and Hydraulic onto the two existing ingress – egress that are nearest to the Wassall – Hydraulic intersection. These curbs shall be per City Standards.
12. Any violation of the conditions approved, as a part of this request, shall render the Conditional Use null and void.

WARREN moved, **MARNELL** seconded the motion.

PLATT "It seems like recently we have been getting in, on a regular basis, requests for used car lots that are wrapped up in some kind of a new package. That reminds me of the statement 'a rose is a rose is a rose'; and a used car lot is a used car lot. It seems to me that used car lots have to be treated for exactly what they are, and that is something that does not belong in a residential area. It is the easiest way I know of to start running a place down.

Just because the person proposing it is well liked in the neighborhood is no guarantee, of course, that that person will be here next week. Or that somebody else won't be running it. The impact of used car lots on neighborhoods is well established and what they look like is well established. I certainly can't support this."

BARFIELD "We are talking about approving this, and one of the things that has not been brought up is screening. In particular, screening on the north side of where we have a residential area. That is something that should be discussed."

GAROFALO "I have a question of staff. Did the DAB III meet last night or the night before and take this up?"

LONGNECKER "No, sir, they did not."

GAROFALO "They didn't?"

LONGNECKER "No. On Mr. Barfield's screening, one of the requirements that staff did put in the conditions if this was approved was that there be erected and maintained a 6-foot solid screen along the northern and western property lines, which is where the residential areas are. So we do address screening along the residential sides."

WARREN "A couple of things. One is on the screening. If you went over there and looked at the first house north, I don't know which you would be screening against—against the house or the car lot. It looks pretty bad.

Another thing, in response to Commissioner Platt's concerns, I think this board has taken a view that the small, well-run car lot is a very viable commercial interest, and instead of thinking of the old car lots like we used to have, we have put some restrictions on these car lots that makes them very desirable for neighborhood type businesses. They are neighborhood type businesses. So I don't go along at all with his perception, his vision, his mind's eye view of what a car lot is because obviously it is not what I have of the small neighborhood type car lots."

GAROFALO "I have lived in the neighborhood for almost 40 years now, south of that intersection and I know the neighborhood very well. I think a car lot at that location is completely out of character with the neighborhood. The intersection is retail as the staff pointed out. It is retail, small businesses, a couple of restaurants. There is an insurance office there, there is a barbershop—all little local retail things, and Mr. Shooter over there that runs Shooters, apparently runs a pretty good little business there. Quite frankly, I haven't been in it. But it is just out of character. It is all of the things that the staff pointed out for the neighborhood.

It is all completely single-family residential, to the north, to the south except for on the corner where the South City shopping center is, to the west. Everything to the west of Hydraulic is totally single-family residential. There is multi-family east on Wassall. To the northeast is all single-family residential. I think it would tend to add to a deterioration of the neighborhood. It is an old neighborhood, which has its problems anyway. I think some sort of other small local type of retail that is similar to the other retail at the intersection there would be much more appropriate for that location than a used car lot."

MICHAELIS "This may be a little inappropriate, I don't know, but I am going to ask the maker of the motion something, because I have been informed that we probably didn't notify the DAB of this issue. That is the reason why they didn't have any recommendation on it. So in consideration of that, would you want to consider withdrawing your motion and deferring this to 2 or 3 weeks to have them have a chance to look at it?"

WARREN "I was out and inspected this site. The sign has been on it as a zoning change. We have notified the people within 200 feet, as I understand it and he has notified the people in that general area there. We have nobody here protesting this, so no; I think the opportunity has been there for protesting if we were going to have it. I think we would have had it now. So I am going to leave my motion stand as it is."

MARNELL "I guess I continue to be baffled by this attitude toward small car lots. How they are not retail businesses is just amazing to me. Kitty-cornered across from this proposed site is a little strip center in which the owners of the strip center have no control over what that parking lot looks like and the kind of vehicles that are on there and what order they are even parked in. That must make Frank just feel terrible when he drives by there to see that with all of those vehicles outdoors, compared to what a neat business would be on the opposite corner. I don't understand that. So I am certainly going to vote in favor of this motion. But this bias against small car lots is a real strange one and I would suspect that everybody at this table drives a car, maybe not."

PLATT "I just want to respond to the comment that with the restrictions that we put on used car lots now days that they are different than they used to be. I look out my living room window at one and it was approved to have three cars on it as part of an operation. I went by there this morning and there were 14 cars there for sale—on the sidewalk—parked every which way. There was a transmission pulled out sitting there in the driveway. You can't police all of them, and a used car lot is a used car lot. They don't look good."

MICHAELIS "Mr. Warren, for clarification, is your motion intended to include all of the staff's recommendations for approval if we approve this?"

WARREN "Obviously not the denial."

MICHAELIS "I know, but the conditions that were set for it."

WARREN "Yes, items 1 through 11, and then also to include permanent closure of those two exterior driveways, closest to the intersection."

VOTE ON THE MOTION: The motion carried with 10 votes in favor and 2 in opposition (Platt and Garofalo).

7. **Case No. ZON2001-00003** – Jarold E. Lewis requests zone change from "LC" Limited Commercial to "GC" General Commercial on property located on the northeast corner of Pawnee and Hillside.

DALE MILLER "The applicant would like to defer this case for 90 days to get some more estimates."

KROUT "That would be to May 10."

MICHAELIS "So, for him, you are asking for a 90 day referral. Is there anyone in the audience here to speak in favor of this item? Is there anyone here to speak against the item? Okay, what is the pleasure of the Commission?"

MOTION: That the item be deferred for 90 days.

JOHNSON moved, **LOPEZ** seconded the motion, and it carried unanimously (12-0).

8. **Case No. CUP2001-00008 (DP-19 Amendment #2)** – Mike Khoury (owner); Horizon Telecommunications and Cricket Communications (Applicants); Ferris Consulting c/o Greg Ferris (Agent) request a CUP amendment for a wireless communication facility on property described as:

Lot 1, Block A, West Center Addition to Wichita, Sedgwick County, Kansas
and
Lots 1 and 2, Hattrup Addition, Wichita, Sedgwick County, Kansas
and
Lot 1, First Place West Addition, Wichita, Sedgwick County, Kansas
and
Lot 1, Higgins-Andeel Addition to Wichita, Sedgwick County, Kansas. Located on the southeast corner of Central and Tyler.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking an amendment to the West Center CUP (DP-19) to permit the construction of a 165-foot high monopole tower (see attached "Typical Equipment Layout") by Horizon Telecommunications for use by Cricket Communications. The proposed site is zoned "LC" Limited Commercial. The Unified Zoning Code requires a Conditional Use for Wireless Communication Facilities over 85 feet in height in the "LC" Limited Commercial zoning district. Conditional uses for properties located within a CUP are considered by a request to amend the CUP.

The proposed tower would be sited on a 3,825 square foot area located near the southeast corner of Central and Tyler on a grassy area behind Spangles and between Legacy Bank and Intrust Bank (see attached "Tyler Tower Site"). The proposed tower would be located in a 45-foot by 85-foot compound with the tower and associated antennas located in the center of the compound and the ground-level communication equipment located in the northern portion of the compound. The compound would be screened by a 6-foot high wood fence. Access to the compound would be provided through the CUPs cross-lot circulation agreement.

The character of the surrounding area is commercial. The properties surrounding the site in all directions are zoned "LC" Limited Commercial and are developed with numerous commercial businesses located on all four corners of the Central and Tyler Intersection. The nearest property developed with residential uses is an apartment complex located approximately 400 feet to the east. The nearest properties developed with single-family residences are located along Tyler approximately 500 feet to the southwest.

The subject property is located in the vicinity of Mid-Continent Airport; therefore, planning staff contacted airport staff to receive their input on the proposed tower. Airport staff indicated that the site could possibly lie within a clearance corridor for the Runway 14 VOR approach; however, the airport staff will not be certain of any negative impacts on the operations of Mid-Continent until the FAA has reviewed the location of the requested monopole. Therefore, the airport staff requested to review the FAA's decision regarding this monopole prior to the issuance of a building permit so that the airport staff may ask the FAA modify their decision if the airport staff feels the FAA has reached their decision in error.

The applicant indicates that the proposed wireless communication facility is part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. The applicant's justification for the request (attached) indicates that this site is necessary for Cricket Communications, Inc. to provide wireless phone coverage in west Wichita and along west Kellogg and to provide handoffs from existing or approved sites located near 29th and Maize; Kellogg and Maize; 9th and Hoover; and Harry and Hoover.

The application also indicates that an existing monopole tower at Bishop Carroll School would require reconstruction and does not provide adequate coverage to residential areas in west Wichita or along Maize Road or 21st Street North. The application does not include any cost information to compare the cost of reconstruction of the Bishop Carroll tower with the cost the proposed new tower. Additionally, the application does not address the feasibility of co-locating on the existing monopole at Bishop Carroll at an available height of approximately 110 feet.

CASE HISTORY: The subject property is platted as part of the Hattrup Addition, which was recorded on July 1, 1986. The subject property is also within the West Center CUP (DP-19), which was approved on October 4, 1966 and amended July 10, 1984.

ADJACENT ZONING AND LAND USE:

| | | |
|--------|------|----------------------------|
| NORTH: | "LC" | Legacy Bank |
| SOUTH: | "LC" | Strip retail/office center |
| EAST: | "LC" | Intrust Bank |
| WEST: | "LC" | Spangles restaurant |

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site will be provided through the CUPs cross-lot circulation agreement.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a CUP Amendment or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. The proposed facility does not utilize existing towers in the area. The existing tower at Bishop Carroll could be reconstructed. Additionally, space is available to co-locate on the existing tower at Bishop Carroll at a lower height. Since the applicant has indicated that a new facility will be required in far west Wichita in the next phase of coverage, a co-location site at Bishop Carroll could be used in conjunction with a new facility located further to the west. Planning staff finds that a new facility at the proposed location and a new facility located further to the west is an unnecessary proliferation of towers. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, Planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 165 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The compound shall be enclosed by a minimum six-foot high solid screening fence.
- F. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- G. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airport Engineering for the City of Wichita prior to the issuance of a building permit.
- H. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- I. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial. The properties surrounding the site in all directions are zoned "LC" Limited Commercial and are developed with numerous commercial businesses located on all four corners of the Central and Tyler Intersection. The nearest property developed with residential uses is an apartment complex located approximately 400 feet to the east. The nearest properties developed with single-family residences are located along Tyler approximately 500 feet to the southwest.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LC" General Commercial, and could be developed with uses permitted by the West Center CUP. Wireless communication facilities in excess of 85 feet in height in the "LC" district may be permitted as a Conditional Use, but typically should conform to the guidelines of the Wireless Communication Master Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approving a second facility in the vicinity of Central and Tyler when the applicant has not demonstrated that the existing facility cannot be used would have a negative visual impact on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. The proposed facility does not utilize existing towers in the area. The existing tower at Bishop Carroll could be reconstructed. Additionally, space is available to co-locate on the existing tower at Bishop Carroll at a lower height. Since the applicant has indicated that a new facility will be required in far west Wichita in the next phase of coverage, a co-location site at Bishop Carroll could be used in conjunction with a new facility located further to the west. Planning staff finds that a new facility at the proposed location and a new facility located further to the west is an unnecessary proliferation of towers.

5. Impact of the proposed development on community facilities: Access to the site will be provided through the CUPs cross-lot circulation agreement, so no negative impacts on community facilities are anticipated.

PLATT "As an owner of a building and President of the Board of Directors that rents out roof-top space for antenna users, I will step down on this item."

MICHAELIS "Okay. Let the record show that Dr. Platt is stepping down from this case."

KNEBEL "This item is a request to amend the West Center Community Unit Plan to permit the construction of a 165-foot high monopole tower. The property is located at the southeast corner of Central and Tyler and is zoned Limited Commercial. A Limited Commercial district permits towers up to 85 feet in height with administrative approval. Since the tower exceeds that height, the request for the Community Unit Plan amendment was submitted. The staff report indicates that the site is on a grassy area behind Spangles. I have since discussed it with the applicant and he does indicate that it is actually on an asphalt area, which is just immediately adjacent to the grassy area. It is still right behind Spangles and in between two bank buildings on the south side of Central.

Immediately surrounding the area is very commercial. There is a shopping center to the south and restaurants and more shopping to the west. To the northwest, and to the northeast are banks. The nearest residential uses are located approximately 400 feet to the east and are developed with an apartment complex. The applicant submitted a plot that shows the area with two alternative sites that the applicant considered.

The company in question who would be utilizing this tower at the time of application, the applicant indicated that it would be Cricket Communications. Since the time the staff report was prepared, they have also provided documentation from another company, Nextel Communications that also intends to utilize the site. Staff has recommended that this request be denied, primarily based on the location of an existing monopole tower in this location (indicating). This is the requested location (indicating). This existing monopole tower has one slot still left on it that could be used. If that were used, then obviously the applicant is indicating that you have these areas in here where the applicant would like better coverage, so you would expect to see another tower a couple of miles to the west to address that, so that you would have an additional tower, but it would be utilizing one existing and then one additional tower further to the west.

Based on that, and based on the fact that the plan does indicate that you minimize the number of towers and the fact that staff has had previous discussions with the applicant that indicates that perhaps in the future there will be a second tower out further west beyond the developing area of Wichita to provide service for growing areas of that part of town, we have recommended it for denial. However, given the fact that we have not had much luck with towers being recommended for denial, we are providing you with some options for approving this one, should you find that it is appropriate. Those conditions are that it be erected within one year; that it be a monopole tower; that it be limited to the height of 165 feet requested; that the tower provide service for four carriers; that it be screened at the ground level by a solid 6-foot fence; and that it be approved by the FAA.

Speaking of FAA approval, at the District Advisory Board meeting, there was considerable discussion with the District Advisory Board regarding the impact of this tower on Mid-Continent Airport, which is in this location here (indicating), a couple of miles to the south of the application area. The District Advisory Board felt like they had not received sufficient feedback regarding this proposal's impact on the airport. They did recommend that the request be approved; however, according to the document that was handed out just prior to the meeting, they conditioned on the tower not exceeding the height designated by the Airport Hazard Zoning Permit Exemptions for Mid-Continent Airport. This particular tower is located in area 'C' of that map, which would indicate that the height should be restricted to 150 feet or an exemption from that height restriction should be granted.

In addition to that, after the discussion with the District Advisory Board, the Planning staff further contacted the airport to get a clarification as to what their comments that are listed in the staff report, the meaning of those comments, and what they were hoping to gain. There is another memo that I attached separately that reflects a changed Item G regarding FAA approval and the type of review that the airport staff would like to see the FAA conduct on this, essentially conducting a review of the objects affecting that navigable airspace and the impacts to any terminal instrument procedures. Those reviews are not required by the FAA for towers under 200 feet in height, but it is something that we have typically been requiring of towers within the past 6 months or so for those that have been approved. I don't believe that I have any additional information to add. I am sure that it is a little bit confusing since I have everything spread out on three sheets of paper, so I will answer any questions that you have."

MARNELL "Did you say there was a memo attached to here?"

KNEBEL "It would actually be a separate memo. There should be two separate memos, one from the District Advisory Board and one from me to the Planning Commission, and then the staff report."

WARREN "Will you go back to the slide where there was a stake sticking up. I just want you to confirm that that is where it is. I went over and looked at that site and I think I know what we are talking about."

KNEBEL "Okay. From talking to the applicant, I was under the impression that the site was here at this stake. This may be the corner. The applicant is telling me that the site is all along the asphalt."

WARREN "But it can be around that stake?"

KNEBEL "Right. It would be just to the west of that stake. The asphalt is about 6 to 8 feet west of there."

BARFIELD "What is the height of the tower at the school site?"

KNEBEL "It is 150 feet."

MICHAELIS "Thank you, Mr. Knebel. We will hear from the applicant, please."

GREG FERRIS "Mr. Chair, members of the Planning Commission, I am representing Horizon Telecommunications and Cricket Communications as well as Mr. Khoury, the owner of this property. Let me go backwards. We concur, if you would accept this approval today, with all of the recommendations of staff. We have no issues with any of the things that they included in their list of things to be recommended, with one exception. I don't know what this new FAA thing is; no one gave me any information. So what you have in your staff report is what we believe is appropriate.

Let me go through the staff report briefly and then I will talk a little about the FAA. First of all, this is a good site for a tower. We scoured—we spent three months looking for the appropriate site for a tower in this area. We ran Bishop Carroll—and I am sending some pictures around and that will give you an idea of the ground space around Bishop Carroll. Staff wisely in their 1997 or 1998 review included that you had to build a three-carrier tower, but they did not put anything in that plan that said you had to have enough ground space for three carriers. So, basically, at Bishop Carroll, you have a tower that will handle three carriers, but you don't have the ground space. You can see the pictures there that there really isn't any place to put the equipment for that tower. So that is one area that we have a little concern on. We are not sure how we would be able to even use the existing tower, given the ground space that is available. You can see in the picture that there isn't any.

The second element is that this tower at Bishop Carroll was run at several different heights; even re-constructing the tower and it still leaves gaps to the west, which means we have to build another tower. If your goal was to minimize the number of towers, making us use this tower, building another tower and then we are still going to need a tower further west to cover the west area in phase II, you are getting, really, two towers plus three towers constructed by us or three antennas constructed by us versus putting a tower here and only reconstructing one additional tower. So you are not gaining anything when it comes to the actual number of towers that will be constructed. So the idea that you are minimizing the number of towers with this proposal from staff is not accurate.

The other problem we have is that this tower is almost half a mile away. It is 2,260 some feet from that tower to our proposed location. That is that much closer to another one of our towers. There is a little memo in your packet, and we have an RF Engineer here if you would like further explanation, and he does speak English--so if you have some questions, he can answer those for you—that explains that as you get closer to another tower, you end up duplicating and using double capacity from those towers. What that means is that you run the risk of needing yet another tower of shorter height in between those to eliminate those soft hand-off problems.

So by moving this tower, you definitely require a new tower, which we are proposing anyway, and you may require another tower further to the east, which is primarily residential and it doesn't help us much. Also, as you go west, and any of you who know west Wichita, as you go west from this intersection, there really aren't the enormous areas of commercial like they have in this location. That is why we selected this location. This is the farthest from residential that you can get, virtually in west Wichita in the coverage area that we are looking for. If we went on any one of the other three corners, we would be nearer to residential than we would be here. This is entirely surrounded by commercial property.

There are, as you can see, this is relatively new development, but these trees are already maturing. These are shade trees that will continue to grow and are exactly what the Plan calls for. If you look at the Comprehensive Plan, it clearly states that you should look for sites that can be shielded by buildings, sites that can be shielded by trees, sites that are in commercial areas and this all meets those criteria. This does meet the Plan.

And finally, I am not going to dwell a lot on the cost of rebuilding the tower at Bishop Carroll, because if we were to rebuild it, we would have to rebuild it closer to the residential that borders on the east side because there is no room to rebuild it on this side, so you would have to rebuild it on the other side to get the same amount of coverage. The cost to re-construct a tower, remove that tower, replace the light standard and move the two existing carriers over would more than double the cost. If it really was a benefit; if we were reducing the number of towers, for example, if we were moving it away from residential, there are lots of things that you could say maybe a benefit, but you can't point to this site and say that any of those are benefits.

So, I believe that this is a good site. I believe that this is an appropriate location for a cell tower. We are going to meet the requirements that are in the plan. In my letter, in the very last paragraph, basically, it talks a little bit about this being a Conditional Use. Even if, and I will not concede that it does not, but even if it does not comply with the Master Plan, there is not a single other thing that you can point to in your list in the Zoning Code of the things that a Conditional Use is supposed to comply with, not one single element that would preclude a tower from going in here. Parking is not the highest and best use for this land. This is really too small of a parcel to be used for anything else but parking or a cell tower, and the amount of revenue and what it can do as a cell tower clearly is the highest and best use for this ground. So even when you look at how long the property has been vacant and what it can be used for—really you can't use it for

anything but parking or a cell tower, so I conclude that as I read through your requirements in your Zoning Code that we have completely fulfilled all of those.

Finally, the last element is really one of planning. If we went over on the tower at Bishop Carroll, somebody is going to need a tower in this area. There are seven carriers in Wichita and there really are no other towers in this area. So somebody is going to need a tower sometime in this general vicinity. Nextel has indicated an interest. I want to correct Scott, I am not saying that they are going on us, we have not negotiated a lease agreement with Nextel at this time, but we do have a letter, and I don't know if he has provided you with a copy of that--I will be glad to get it if he hasn't—that indicates their desire to negotiate a lease of 150 foot on this tower. So, if we build this tower, Nextel is going to be in here wanting to build a tower somewhere in this area, and somebody else. I think the only two carriers on that tower are Voice Stream and AT&T at this time, so that leaves Verizon, who is looking to build up their market a little bit more substantially; Southwestern Bell, who has a tower a little over a mile from here, that may want to fill in, as this area is a high-traffic area. So somebody is going to need a tower. What we are doing is building a tower. What we are doing is building a tower for our need, but also providing one that will have three other carriers, basically maximizing the use in the area. We have met all of the criteria that you have established in your planning document. We have met all of the criteria that you have established in your Zoning Code. We believe that this is an appropriate use.

I will just dwell real briefly on the FAA. Towers under 200 feet are not required to go through FAA. That is what the airport is talking about when they talk about wanting this extra step. We are going through FAA. You are requiring it, and we are willing to do it anyway. We have already submitted for an FAA approval. We have done that on all of our towers, and we don't have to. But if you don't do it, and the FAA determines later that you had a problem, you have to tear your tower down. So it is just prudent for us to do it in the first step rather than after we have already done it. So while we are not required to do more than just the obstruction study, we already are doing the second part of that. I don't have the memo to give you the exact language that they are recommending. But we have no problem. Once you say that we have to submit to you, and that is one of your requirements-- FAA approval—you are really including both of the things that the airport is talking about. And finally, I was at the DAB meeting, and their motion was one of approval and I don't recall where they stipulated that it had to comply with whatever the hazard area was at that time. We don't have any problem requiring as is normal if it is in Area C. It requires a special permit and we have no problem with you including that as a condition. You have done that on other towers, that you must get an Airport C hazard permit. We have no problem with you including that as an additional condition. With that, I will be glad to answer any questions."

WARREN "Just a quick question. I notice we are requiring a fence. I am almost wondering, would your equipment be unsightly, more than the fence might be unsightly?"

FERRIS "This would be a solid wood fence. We will put up a fence of some kind up. This equipment is worth \$300,000 to \$400,000 of equipment. We are going to fence it one way or another. Usually, we do chain link with trees around it, but obviously, it would be very difficult to plant trees in this area, so staff is recommending and we concur with a wood fence in this area."

LOPEZ "The DAB recommendation is to recommend approval, subject to the height proposed by the Mid-Continent Airport FAA requirements. You are not opposed to that language?"

FERRIS "I am opposed to restricting this to 150 feet. If the FAA does not allow us to go over 150 feet, or we are not able to get an Airport C Hazard Permit, then we would live with 150 feet. We want to maximize this tower for several reasons. 1. For our own coverage, but also for the coverage of Nextel coming in, which would then have to be at 140, and that doesn't maximize their coverage, either. I don't recall that at that meeting where it was recommended for approval—there was a lot of discussion about the FAA and that it had to be approved by the FAA—but I don't recall that it had to be subject to an Airport Hazard permit. We were talking about it and we were thinking it was in an area D, which is a 300-foot tower, which we are not planning to do anything close to.

We would prefer that you would follow the recommendations of staff, which are to require an FAA approval and to add a condition that we must get an Airport C Hazard Permit."

HENTZEN "Concerning the Airport Authority, it seems like every time this comes up, somebody has asked the airport about it and they haven't really answered. Is there a possibility that when an applicant comes in and we require that FAA approval, that if the airport doesn't answer within 90 days or 6 months that it is automatically approved? What I am saying is, is it proper to make an applicant come here and we then stall him around to get up here and get it approved, and then to slap another delay on him by some government agency? That is all I am saying. It is usually is that they don't have the information from the FAA or the airport, and I think they ought to either answer the inquiry or not."

MARNELL "I think maybe that part of the answer to that, Bud, is right here in the DAB report. It says 'the airport staff indicated that they do not have the expertise to develop these guidelines, instead rely on the FAA to review wireless facility requests and react to these reviews if they discover an error'. The FAA does have the expertise. They set national standards. They are the same around the world. It isn't that you can't build a tower at the end of the runway in Kansas, but it is okay in California. They are uniform, and if we get into having local groups try to regulate navigation, it would just be a nightmare. That is why the FAA has taken that authority, and they do have the expertise. And in addition to that, I will say I am a licensed pilot and I think they are the right people to have at that level."

FERRIS "But one of the things that we do that I don't think Bailis (Bell) was aware of is that we are filing FAA on all of our towers, which means that we are doing what he really wants us to do, have the FAA do the two-prong study versus just

having some group say that we don't really need to since it is under 200 feet. So we don't have any problem with that. We are already doing, really, what the airport wants us to do and gives them the satisfaction to know that we went through all of procedures."

MICHAELIS "Are there any further questions of the applicant? Thank you, Mr. Ferris. At this time, is there anyone in the audience that wishes to speak in favor of this application? Is there anyone that wishes to speak in opposition to this application? Has there been any ex parte contact on any of this? Okay. We will bring it back to the Commission."

MOTION: I move that that the request be approved, subject to the following:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 165 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. The compound shall be enclosed by a minimum six-foot high solid screening fence.
- F. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- G. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- H. An Airport Hazard Zoning Permit Exemption for Area C shall be acquired by the applicant prior to the issuance of a building permit.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. Any violation of the conditions of approval shall render the Conditional Use null and void.

MCKAY moved, **HENTZEN** seconded the motion.

LOPEZ "The comment that Mr. Ferris made that they wouldn't have any problem with complying with the FAA if that was a requirement, do you have a problem with that?"

MCKAY "I think that was one of the requirements, wasn't it?"

KNEBEL "It is Item G."

KROUT "It was part of our recommendation."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. Platt abstained. Susan Osborne-Howes was not present.

9. **Case No. CUP2001-00009 DP-8 University Gardens CUP Amendment No. 10** – The City of Wichita (owner/master lessor); The Air Capital Community Development Company, Inc. (master lessee); Michael N.Williams (owner) request the screening requirements for Parcels 8 and 9 on property described as:

Lots 1 and 2 University Gardens 2nd Addition. Generally located on the northeast corner of 21st Street North and Oliver.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: This is a request to amend the screening requirements for Parcels 8 and 9 of DP-08 University Gardens C.U.P. A four-foot solid wall constructed of either brick, stone, masonry, or architectural tile was required along the west 35 foot setback line, except at approved points of ingress and egress as a condition of a special use exception to use the 200-foot buffer strip of property zoned "SF-6" along the west property line as a parking lot (BZA 2-80). This requirement is denoted as part of a 35-foot landscaping strip along both the west property line of Parcels 8 and 9 and the south property of Parcel 9 extending east from Oliver for 275 feet (General Provision #3 of the C.U.P.).

Parcel 9 abuts the northeast corner of the intersection of 21st and Oliver. A medical office building is located on this parcel. Parcel 8 is located to the north of Parcel 9. It was recently converted from an old Dillions Store to a multi-tenant structure for entrepreneurs and start-up businesses, currently including Oliver's Collectibles, Designers Connection, and Via-Net Transcriptions. The requested amendment would remove the four-foot screening wall and perhaps reduce the height of the berm on the site in order to increase visibility of the businesses to travelers passing by the site.

The University Plaza Shopping Center includes an indoor climate-controlled storage facility (Storage USA), two restaurants along 21st, and a commercial building currently occupied by Breakthrough Ministries Church (tenant), Harrold E. Jones Attorney's Office (tenant), and Pop's Laundromat. This building is located on Parcel 2 near the east edge of the C.U.P. and was considered for another amendment by MAPC on February 8, 2001. The request was deferred until March 22, 2001. Tall Oaks Apartments to the north also is part of the University Gardens C.U.P.

The other land uses in the surrounding area vary in each direction, with a wide mix of uses. Wichita State University is located to the southwest of 21st and Oliver, with the golf course on the corner and the baseball complex farther to the west. Crestview Lakes, a large-lot residential development is located directly to the west of the application area. East of the C.U.P. there are two multi-family housing projects. These are the 32-unit senior housing project, Pinecrest Senior Residences, and the eight-unit complex for group housing, Pinecrest Court. There is also the future site for Breakthrough Ministries Church, which is currently a tenant on Parcel 2 (the application area). There is also a cell tower and a warehouse, self-service storage, to the east of Pinecrest.

There are a large variety of uses to the south and southeast also, including Unity Church and River Community Church on the southeast corner of 21st and Oliver, some offices and small apartment units. Three other uses merit mentioning. These are a convalescent care facility (Integrated Health Systems), the Cerebral Palsy Research Foundation of Kansas, and the Timbers, which offers housing for handicapped persons and has a large number of residents who are confined to wheelchairs. These residents utilize the sidewalks along 21st to travel to shopping areas for their shopping needs.

CASE HISTORY: DP-8 University Gardens is one of the oldest C.U.P.s in Wichita, dating to July 6, 1965. The original C.U.P. only included the multi-family area where Tall Oaks is located. Amendment #1 approved June 12, 1969 by the Board of City Commissioners created the commercial component of the C.U.P. and added the shopping center parcels. The Board of Zoning Appeals case (2-70) allowed the buffer strip on Oliver to be used for parking. The Landscape Plan required in conjunction with the C.U.P. and the BZA case was not completed initially. This deficiency was finally resolved in 1977 and the wall was installed. However, apparently the landscaping was not maintained in compliance with the Landscape Plan, according to records in 1995.

More recently, Amendment #7, approved March 4, 1986, by the Wichita City Council removed the fast-food prohibition from Parcel 10, and Amendment #8 approved by MAPC on July 30, 1998, allowed the former K-Mart facility to be converted to an indoor storage facility, with the underlying zoning remaining "LC" Limited Commercial. Last year the BZA approved a sign variance, also in response to the lack of visibility of the buildings from the street. In order to compensate for the lack of visibility, a projecting building sign was allowed to be 38 feet in height (BZA2000-00003 dated April 25, 2000).

Many other applications have been filed regarding the property. One was an attempt to downzone the "LC" property to "AA" that failed (Z-0655 denied July 6, 1965).

ADJACENT ZONING AND LAND USE:

| | |
|---------------------------|---|
| NORTH: "B" | Tall Oaks Apartments, single-family |
| EAST: "LC", "MF-29" | Self-storage, cell tower, vacant (future church), Pinecrest Senior Residences, Pinecrest Court |
| SOUTH: "SF-6", "LC", "GO" | Churches, convalescent care facility, Cerebral Palsy Research Foundation of Kansas, group home (the Timbers), small commercial uses |
| WEST: "U", "SF-6" | Golf course, single-family residences |

PUBLIC SERVICES: Transportation access is via 21st Street North, a five-lane arterial street. In 1997, average daily trips were 21,353. Traffic is projected to increase modestly to 26,302 daily trips in 2030. On Oliver, average daily trips were 10,819 in 1997. This is projected to increase to 16,797 in 2030. Other municipal services are available.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan shows the site as "commercial", and would be considered a neighborhood center, typically anchored by a supermarket with a variety of tenants.

The area is just beyond the boundary (southwest corner of 21st Street North and Oliver) of the neighborhood plan, "Northeast: Rediscovering Community" (November 1995). Recommended strategies for commerce and economic development of the Northeast Plan are to "retain or replace existing full service grocery and general retail goods stores within or close to the study area (CE-2), "establish a program of 'challenge grants' and other financial incentives to attract new investors to the area (CE-3), and assist community-based development ventures, cooperatives and other similar organizations which provide local community benefits, as resources permit (CE-4). In conformance with these strategies, the space previously occupied by Dillons was converted to University Plaza in December 2000. It is oriented to start-up businesses and spearheaded by The Air Capital Community Development Company, Inc., a subsidiary of the Kansas Southwest Jurisdiction of the Church of God in Christ. It is the result of a public/private partnership to accomplish the strategy of a mix of retail uses available to the neighborhood.

RECOMMENDATION: After the center had suffered a period of serious decline, marked by the loss of Dillons, K-Mart, Revco, Sonic, Kinko's and other tenants, an aggressive and determined area by the church-based venture that has been supported by an active neighborhood association, Chisholm Creek Neighborhood Association, has resulted in a turnaround. The shopping center has been the subject of a major effort to redevelop it with a sound mix of tenants that

provide a variety of retail goods and services to the surrounding neighborhood. There are new tenants in University Plaza, and Storage USA is offering a good-quality mini-storage option to the general public. The efforts are resulting in an achievement of the strategies of the neighborhood plan.

The lack of visibility of the commercial buildings from travelers on 21st and Oliver is a hindrance to the retailers in University Plaza. The buildings are below the grade elevation of the street. In addition, the landscaped area is bermed and has a four-foot screening wall that further hampers visibility.

This is a unique situation. Other retail sites throughout Wichita are required to have landscaped street yards with low shrub screening in order to soften and enhance the appearance of the commercial structures and parking lots. But wall requirements are restricted to along common property lines or to screen outside storage or loading areas. In this case, the elevation drop from the arterial streets to the buildings in the center further reduces visibility.

Based on these factors, the conformance of the uses developed on the parcels with the policies of 1999 Update to the Wichita-Sedgwick County Comprehensive Plan, and the information available prior to the public hearing, Staff recommends the application be APPROVED subject to the following conditions:

1. The four-foot screening wall shall no longer be required as a part of the C.U.P.
2. A revised Landscape Plan, prepared by a licensed Landscape Architect, shall be submitted for approval to the Planning Director. This Landscape Plan shall maintain a 35-foot planting strip along the west property line of Parcels 8 and 9 and along the south property line of Parcel 9 for 275 feet. This planting strip shall include trees and shrubs per the Landscape Ordinance.
3. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
4. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
5. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is an unusually diverse mix of residential, commercial, institutional and park uses. Continued commercial use is in character with the commercial uses to the east and south. The property has been zoned "LC" with the "SF-6" (formerly labeled "AA") buffer since 1965.
2. The suitability of the subject property for the uses to which it has been restricted: Continued commercial use is in conformance with the existing "LC" zoning for most of Parcels 8 and 9. The use of the "SF-6" strip for parking has been approved by as a use exception (BZA 2-70 for non-required parking; amended to be for required parking by BZA12-80).
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The removal of the screening wall and any reduction in the height of the berm will make the property more visible from the residential uses across Oliver from the shopping center. However, the use of the 200-foot buffer strip along Oliver as a 35-foot wide landscaped street yard and parking provides a larger degree of buffering for the residents across Oliver, a major arterial street, than in most similar situations.
4. Length of time the property has remained vacant as zoned: The property was vacant for several years, but has recently been occupied by new commercial businesses.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed change is in conformance with the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* and would encourage realization of the goals and strategies of the Northeast plan to reestablish general retail uses in the neighborhood along the 21st Street corridor.
6. Impact of the proposed development on community facilities: None.

GOLTRY "This is a request to amend the screening and berming, but primarily the screening requirements on University Gardens CUP. I will fast-forward to the portion of the CUP plan that focuses on the area we are discussing today, and that is Parcels 8 and 9. One is where the old Dillon's that has been converted into the new retail outlet for the start-up of retail businesses. The other is the parcel that has a dentist's office on it, nearest the corner of 21st and Oliver. The applicant is requesting that a quite unusual screening requirement, that is a 4-foot high solid fence along 21st Street and Oliver be eliminated. This requirement was originally imposed as part of the BZA in 1970, and then amended in 1977. It

is also included on the CUP provisions, so we would be amending the CUP provision to delete that screening requirement of the 4-foot high fence.

I think that one of the easiest ways to present this case with clarity to you is to show you slides about what we are talking about. For those of you who have been to see it, you will know what I am speaking about, too. There is a lack of visibility of the retail parcels that are located where the old Dillon's building is. This slide is approaching the commercial buildings from Oliver. I was parked in a car, sitting in this location. I stepped out of the car, and shot my digital picture, because I wanted to demonstrate to you that this is the screening wall and it obscures the building that sits behind it. Do you see the little red tip there? (Indicating) That is a 38-foot high sign. The reason it obscures it is because you have some berming going on, but berming isn't really the problem. The problem is that you have a change in grade between 21st Street—there is a pretty significant drop in grade between 21st Street and the commercial buildings—and when you impose on top of that that 4 foot high fence along 21st Street, I think it is pretty clear that you can't see a lot when you are driving along 21st Street or north on Oliver.

Because of the time, I think I will skip down and go into Case History. University Gardens has been a CUP that has had a lot of history over its years. It started originally as a Multi-Family rather than a commercial CUP, but it was expanded to be a commercial CUP as early as 1969. Now, there has always been a lot of opposition from the neighbors immediately to the west in the Willow Lakes and Crestview Lakes areas. In fact, they tried to initiate a downzoning request at about that time (1970), but it was denied. The commercial zoning was retained, and therefore it was developed as a commercial use. However, if you recall from the zoning map that I had up earlier, there remained to be an 'SF-6' buffer strip along the western edge of the CUP and it was within this buffer strip that they were required to have the screening wall. It has had a number of amendments—the most recent thing that happened to the CUP was last year, the BZA approved the sign variance to allow this sign that I was showing you to be 38 feet in height. (well, it didn't give it a specific height, but it is 38 feet, according to the documents in the file). They allowed that because of the fact that there was a lack of visibility of the center from the street.

In terms of adjacent land uses, I am taking these shots from within the parking lot. I am standing in the parking lot and you can see the dental office to the north, and as you look back, you can get a good sweep on the fact that there is a lot of drop in grade because that shows the fence along 21st Street and then that would be the churches that are to the south. Over to the west are residential areas—that would be Crestview Lakes and Willow Lakes. To the north, we have the Tall Oaks Apartments.

Now I am standing across the street, taking shots to show what kind of visibility the neighbors across the street get of the shopping center. There is not as much change in grade on the north half of the property from the access drive into the shopping center northward. So, this would be an area where there might be more of a need for some landscaping, versus the area to the south of the approach, traveling to 21st Street. There is a pretty significant drop in grade and that would be the area where the removal of the screening fence would be beneficial to the businesses that are trying to market.

Conformance to Plans and Policies--the Wichita Comprehensive Plans shows this property as commercial. If it is shown as commercial, then it would seem logical to try to do things to enhance its value as a commercial property. It is also just beyond the bounds of the Northeast Rediscovering Community Plan, which is also encouraging us to retain or expand shopping areas within this neighborhood.

In terms of recommendations, I have gone through most of what I have said in the "Recommendations" already informally. And we feel that because there is a lack of visibility and because this is a unique situation that most retail shopping centers do not have a fence that is placed in the front of their location along the major arterials to obscure their view from the traveling public, that the screening requirement be removed and that a revised landscape plan be prepared and approved by the Planning Director. I have a sketch or concept landscape plan up here that has been prepared for the property.

This landscape plan uses a lot of trees. There are actually a lot of very nice existing trees that were planted on the property in 1977 at the end of a very acrimonious dispute over landscaping. The trees themselves were nice; most of the shrubs and the other items in the Landscaping Plan have long since died and not been maintained, but the landscape scheme that has been developed hinges on reusing these existing nice and mature shade trees. A few of the existing evergreens, but not all of them—for instance, there is one evergreen here that really needs to come out—it is in bad shape and it definitely obscures the visibility. But then, to add some ornamentals in the access drive to add some parking lot screening along the edge, not because you need to for height, but because it breaks up the monotony of the site and adds interest and would be an enhancement to the center landscape scheme.

This case was presented to the DAB on Monday night and I believe that there was no one to speak in opposition at the DAB and they voted unanimously to approve. I think you have, at your chair, two additional pieces of correspondence. One is from a neighbor who is across the street who is in opposition, and is expressing opposition to the request to remove any of the screening or berming requirements. The second piece of correspondence is from the person who owns the property immediately to the east of the Old Dillon's structure. He is in support of removing the screening and berming requirements. I think at this point I will stand for questions and let the applicant address your further questions."

MCKAY "Donna, you are saying 'tear the fence down because we can't see the property', is that correct?"

GOLTRY "Tear the fence down to make the property more visible."

MCKAY "So now we are going to plant trees and stuff around it. You think those trees and stuff are not going to grow? I would think in 5 years you would be hiding it more than you are now with the fence."

GOLTRY "Huh uh. In the first place, most of the landscape plans, about half or three-fourths of them were already existing trees. I can illustrate that best by showing you that those are some of the existing mature trees (indicating on slide). They aren't going to obscure the visibility because their canopy is above the height of the center. (Indicating) This is the evergreen that I think, if it remains, needs to be either limbed up or it might possibly need to be removed in order to promote visibility, but certainly these deciduous trees, if they are well trimmed, they are going to be taller than the height of the building. Because what you have going on here is a problem because the property drops so much along 21st and the first part of Oliver."

MCKAY "Did you take that evergreen tree that is further on down...that one right there?"

GOLTRY "Yes."

MCKAY "That one sits on top of the fence."

GOLTRY "Right, but in this landscape plan that was prepared, there is an evergreen, but then there is also clear spaces in between, so you have visibility."

MCKAY "Who is going to maintain this landscaped strip? It was your quote that it hasn't been taken care of."

GOLTRY "It hasn't been taken care of in the past. Currently, the property owner for the parcel is the City of Wichita, but they are a master lessor and the master lessee is here today on behalf of the application. So I think there would have to be a relationship developed on the maintenance of the site. It would be responsibility based on the lease."

MCKAY "Is the City going to be in charge of maintaining, or the people they are leasing it to?"

GOLTRY "It would depend on what their lease says, and I don't know what it says."

MCKAY "Okay, thank you."

PLATT "Who prepared the landscape plan?"

GOLTRY "This is not a formal landscape plan. It is a landscape sketch and it was prepared by a member of the Parks and Recreation Department."

BARFIELD "Can you go back—I want to go where you showed the front of where the 38 foot sign is. Right there. Okay, the way I see it, I don't necessarily see that you are going to gain that much visibility by removing that fence because of the difference in the street level and the center. I don't necessarily see where you are going to gain that much visibility."

GOLTRY "I think you are because that is actually the 'line of site view'. What you are hitting now when you are driving on the 'line of site view', because it is downhill from you, you are looking down and looking into the fence. The fence is the obstructing viewpoint for the 'line of site' going going down. If you just eliminate that fence, it is going to help."

BARFIELD "It is debatable how much it is going to help. It might. Also, let me just ask you right quick here—the letter of opposition states that the restrictions that are mandated by the MAPC and the City of Wichita, when were those mandated?"

GOLTRY "In 1970 and 1977."

BARFIELD "All right. What was the reason for that?"

GOLTRY "There was considerable opposition from the neighborhood to the west."

MICHAELIS "Are there any further questions of Ms. Goltry? Thank you. Can we hear from the applicant, please?"

J. C. GILKEY "Mr. Chair and this Commission, I represent the Air Capital Community Development, Inc., and the University Plaza. The purpose of this project was to strengthen the economical development in our community and to create jobs for moderate to low-income people. All of the tenants of the University Plaza are first time entrepreneurs with limited finances. I have talked with all of them and they have spent a considerable amount of money out of their pockets and they are not really financially able to do all of the things they should do."

The Oliver Collectors have spent \$40,000 from their personal savings and borrowed money. The Medical Transcript training Company there has spent \$20,000; she is a single Mother. Then the Bohm Fashions are a young couple, who, with their parents have invested \$20,000. The School of Cosmetology, which will have 25 seats to train beauticians, and also a barber college. They are in the process of getting \$200,000 to begin with the renovation and preparing those rooms for their particular purposes. The Designers Clothing, which is a unique clothing store, has spent \$50,000. We have a small florist coming in and he has spent about \$15,000.

What I am saying is the problem is that these persons who are first-time entrepreneurs trying to go into a business and then they find out that they have no direct appeal to the passing public. Their finances are limited, so they can't advertise, as they should. So since their funds are limited, it would help and invite more traffic if the fence was down, because when you drive by, I have had many, many calls and people have said that they can't see their buildings. After they pass, they look back and they can see the building. It helped because you allowed us to install a sign on top of the building; however, because of the limited traffic and because most of these are specialty shops, not a large department store or grocery store as was there, and specialty shops have to be advertised more and they don't have the funds to advertise as they should, so we are trying to survive behind bermings and the fence. I would think if it was possible to remove that fence, and to decorate it and make it look nice like was shown in the pictures here, I believe that we would be able to entice other persons to come in and help these first time entrepreneurs.

Senator Rip Gooch, who lives directly west of the property, told me 'whoever you address, you let them know that I am in favor of removing the berming and the fence, as long as they put in some shrubbery and make it look nice'. We met with the District Advisory Board the other day and explained our dilemma of not being able to attract the traffic on Oliver nor 21st Street and they agreed that possibly we should remove the fence. Hopefully you will consider this. All of the tenants would appreciate it if we could do anything to remove the fence that keeps the property hidden. It is a lovely building. The lawns are well manicured.

They mentioned who is going to take care of the financing. Well, I am hoping that maybe the City would help us some. We will be responsible to a great degree and we are hoping that you will consider to help these first time entrepreneurs. These are young people, and some are seniors, who are trying to go into a business that they have never ventured into before. Had they looked at all of the options and the visibility of the properties, they probably would not have signed leases to go into this particular venture. But since they are all first time entrepreneurs, they are trying to strengthen the economical development in this area, I would hope that you would consider removing the barriers to the traffic to these places. All right."

MICHAELIS "Are there any questions of the speaker?"

HENTZEN "Is your request to remove the wall or the berming, or both?"

GILKEY "Both of them."

HENTZEN "Your request is to remove the wall and the berming. Okay."

GILKEY "Yes, sir."

BARFIELD "What do you anticipate that the cost would be to do that?"

GILKEY "I had someone who offered to give me a discount to move the wall of approximately \$2,500. That is just for the wall. It is a solid cement wall."

MCKAY "That would be a discount of \$2,500. You couldn't do the corner for \$2,500."

BARFIELD "I am just trying to find out what you anticipate it would cost to do what you are asking us to do?"

GILKEY "That is all I can answer you truthfully right now, because I have not asked anyone to try to remove the berming."

BARFIELD "Do you have any idea?"

GILKEY "I just told you."

BARFIELD "Let me tell you what my point is on this."

GILKEY "Sure."

BARFIELD "You mentioned the fact that your tenants don't have advertising money, so who would pay for the removal of the wall and the berming?"

GILKEY "I told you like I told that board last week. Hopefully, since we are partners with the City that they would help us to take care of this. Hopefully."

BARFIELD "My final question is, and I don't have any idea what it would cost either, but I would think that as a business person that it would probably benefit your tenants more if you would take that money and advertise the center than it would to remove that wall. I don't see where you are going to gain that much visibility by removing a four-foot wall."

GILKEY "Evidently you have not driven by there, and you live over in that area."

BARFIELD "I drive by it every day. At least three times a day."

GILKEY "Well, if you have driven by there, you know that you can't see that. We are down in a hole. If it was a large department store, it wouldn't be bad because everybody would go to a department store or the grocery store. When you come to specialty shops and specialty stores, it is difficult to get traffic if people don't know you are there. You are right, they are moderate to low income people who are trying to do something as first time entrepreneurs. I am here to ask for help. That is all I want. So I appeal to you, and I would appreciate it if you would consider removing those barriers for those first time entrepreneurs. Give them an opportunity to develop their businesses, and it would help the City economically and this community. Had I known you would have wanted some figures like that, I would have done that. I am being redundant now, but I explained that since we are partners with the City, when you look at these figures and these persons who have invested and borrowed monies to try to make a business work and then they look and say 'my goodness, maybe we made a mistake, but we are stuck here for three or four years, so we have got to try to do something'. So I am trying to appeal to you to let them remove the barriers."

MICHAELIS "Are there any further questions of Mr. Gilkey? Okay, thank you, sir. Is there anyone else here to speak in favor of this application?"

CHARLES MCAFEE "I am a resident who lives right over across the street from the subject property. Twenty-five years ago, we were part of the group that mobilized to try to save the existing, very large pine trees that were right on the corner at that time. The developer came in and cut everything down. It was a horrible sight to watch. I am one of those people who love to build buildings around trees, not cut them down."

The reason I am here is that I have spoken with a number of the other neighbors and Senator Gooch and some of the rest of them, and I don't think anybody is opposed to removing the ugliest wall around any development that I know of. That wall got there because when the site was being developed, it was as clean as that table, and what it had been before that was a magnificent group of very large, mature trees. So the wall basically was a quick-fix that all of us assumed that the landscape plan that was promised to us at that time would actually be in effect and would by now be something that we would all be proud of.

On your Page 3 of the staff report, the staff comment on the case study says 'however, apparently the landscaping was not maintained in compliance with the Landscape Plan according to the records of 1995'. What I am here for is to sort of make certain that everything is seriously clear in this process. On Page 4, there is a reference to the 'Northeast Rediscovery Community' at the southwest corner of 21st Street North and Oliver. I have never heard of the 'Northeast Rediscovery Community' and the southwest corner of 21st and Oliver is the University Golf Course. So I really want a clarification of exactly does that mean?

Further on down in the recommendations, it says, 'in addition, the landscaped area is bermed and has a 4 foot screening wall that further hampers the visibility. I don't think there was a berm put anyplace. I think that was the normal slope of that piece of ground. I don't recognize any berming, as I know it. So the fence just sort of follows what the contour was at that time. I don't want us to be operating under an illusion that there was some serious berming because there wasn't. I really just want to make certain that we clarify the fact that there is no significant berming at that point.

The visibility, when you are driving along in your car, and I drive it 4 or 5 times a day, and there is no question that you can't see anything that you saw on the slides from your car. On Page 5, it says 'a revised landscape plan prepared by a licensed landscape architect shall be submitted for the approval of the Planning Director. I would like to make certain that the neighborhood has the ability to review that landscape plan before it is implemented in that process.

Now, Mr. Gilkey made a marvelous plea. I am a very realistic person. That marvelous plea is only the first step. My recommendation on this whole thing is that the City decides that the City is going to maintain this, then I don't think it is going to work. I think that the wall can come down; I think that a new creative landscape plan should be done. I think that will help him just this much (indicating) to make that place successful. But it is also going to take more than that."

MICHAELIS "Mr. McAfee, excuse me, sir, but your time is up. Would you like an additional couple of minutes?"

MCAFEE "Yes, please."

MOTION: That the speaker's time be extended.

WARREN moved, **GAROFALO** seconded the motion, and it carried unanimously.

MCAFEE "I think that is only the first step, but my recommendation would be that you can remove the berming, do the landscaping, let us see the landscape plan, and let the City commit themselves that they are going to be the ones that are going to maintain this particular district. Thank you."

WARNER "When you say 'we', who particularly are you saying as far as approving the Landscape Plan? Who is we?"

MCAFEE "I am talking about the neighborhood; the neighbors. I think it would at least be of a reasonable amount of respect that the neighbors across the street would get a chance to look at the Landscape Plan. I don't think anybody is going to have any real serious problem with it, but I think that just out of respect the neighbors across the street ought to have the opportunity to look at this. With a commitment that the City is going to maintain it."

MICHAELIS "Are there any questions? Thank you sir. Is there anyone else here to speak in favor of this application? Is there anyone wishing to speak in opposition? Please come forward."

RON BELDEN "I am a neighbor. I live, not on Oliver Street, but in the second row of houses off of Baldwin. I am part of Whitehead and part of Blackhead. Not to be completely against Mr. McAfee, but not to be for it, either. I am not for taking down the wall, which I do agree is probably the ugliest wall I have ever seen in my life. This was put in before I moved into my house, but as I understand it, there was an agreement to leave a hedgerow all along there. That, as Mr. McAfee indicated, was completely wiped out until the last 30 or 40 feet down at the north end of the lots. Now because it had already been fait accompli, the neighbors got up and put up quite a healthy stink and got an agreement that there would be landscaping, berming, or whatever to keep that place from being an eyesore to the people living across the street in the neighborhood west of there. It didn't happen.

The trees that she was showing just a moment ago are the scrubbiest looking trees you ever saw in your life because there is not anything there, and in front of that ugly wall, it is absolutely terrible. Now, as a landowner in the area, I know that the whole land values have probably already taken their hit when they first put in the shopping center, but why should we take any further hit, I don't know. And I agree with Mr. McAfee that I don't think there is one sign of an anhill of a berming anyplace around that property, and yet it has been called berming. We can't trust what is going to happen, so I don't know whether objecting is very beneficial or not. But I would like to express my opinion that the wall, as ugly as it is is beneficial to the people living there that have been living right along Oliver and the people west of it for far longer than the shopping center has been there. They have had promises made to them that have not been kept and the wall does provide some shield from a very commercial looking big parking lot.

The natural slope of the land has always been there and they built the shopping center in there to start with. They had agreed to leave that hedgerow, which they didn't, and they put the wall in to replace the hedgerow. Now, if they had put in a wall something like they put out, say along the hedgerow they took out on 13th Street along the Koch property, that wouldn't have been a bad looking wall. But they put in a very cheap wall. It is a concrete slide in the concrete post type of built up wall, and you take that out and I've got a 6 foot fence along the east side of my property, which is the back side of my property, and I can see the 38-foot sign up there just sign, whereas before I didn't see anything at all.

I don't even remember being asked whether that was acceptable to me, but I suppose it was advertised and I didn't pay any attention to it or something. And it is not all that objectionable, but if you take out the 4 foot wall, I am going to have more that I can see than I want to, and I am certain the people that live right along Oliver just across the street, Mr. McAfee and a number of others. We have a lot on the corner right now that we can't get the City to enforce their regulations. It is more like a used car lot. They sell fruit and everything else. We can't even seem to get that controlled. That's another subject.

But anyway, I think I speak for the majority of the property owners in the Crestview Lakes Association. I am a member of the Crestview Lakes Association, and I have, in the past, been President. Right now, my wife happens to be the President. I am trying to represent her at this meeting. I am probably doing a poor job of it, but I hope you get the drift."

MICHAELIS "Sir, your time is up. Do you need any additional time?"

BELDEN "Not unless somebody has questions."

MICHAELIS "Are there any questions of the speaker? Thank you, sir. Is there anyone else wishing to speak in opposition to this? Seeing none, would the applicant like to speak any more? Okay. Mainly what I would like to address is to you, so if you would like to come up in case you want to respond anyway.

This seems to me like one of those 'horse before the cart type things'. The big variable here is who is going to pay for it and who is going to maintain it? Just off of the top of my head, you are looking at an expense here well in excess of \$100,000. Then, there is the maintenance on top of it, and I get the impression very clearly that if the City does not step up and do this, then those funds are not available to do it. So, what I am wondering is would we be better off putting this on hold, so to say, and getting with the City and seeing if that can be worked out, and if those kind of terms can be reached because that would make at least my judgment on this a lot clearer. The way it is presented now, I would have a hard time supporting tearing down something, even though it may not be the prettiest, sometimes a known is better than an unknown. If we tear it down and get in the middle of something and then we get halfway through the excavation and there is no money to take care of the rest of it, that would be worse.

So I am just asking you, would you want to consider maybe putting this on hold and getting with the City to see if that can be worked out first?"

GILKEY "For removing that fence, no. Not at all. Now, if I can't get any help removing the fence, I will do it myself. You can put that on the record. I was going to do it myself, because those people need help. I am appealing to you for help. Then I understood that I couldn't remove the fence because it had been agreed with the City and neighborhood committee that they would put the fence up. Now, I met with that neighborhood committee, two or three times, and they assured me that they would work with us to make this project work. No one objected to the fence. I specifically spoke to that point. No one did. I met with them two or three times. We met on the church on the corner of 21st and Yale. However, I was going to give the \$2,500 to the contractor to move that fence and then I called someone and they said I couldn't do that because the City had authorized that fence. I had been talking with them all year, trying to get someone

to help us. I appreciate the opportunity to come here today to make the appeal. I will take the fence down myself if I can't get any help.

And as far as the shrubbery, now if you say it will take \$100,000 to put shrubbery up there and make it look nice, I have a problem with that. We have cleaned that area up, in fact, I didn't know before that I couldn't bother anything there. We went out and I paid a lawn person to manicure that place and it looks better than it has looked in years, even when Dillon's was there. It hasn't looked this good in several years. I had them to manicure the place, trim all of the dead stuff out and then I found out I was in error doing that because I couldn't do what I wanted to do. So I have been waiting for an opportunity to ask for your help. The more I put this off, the more the people are going to suffer. We didn't start this project to fail, but if we can't get any help, those people are going to have to file bankruptcy. And some people would probably be happy to see that done. We need help. And that is why I appealed to you."

MICHAELIS "Okay, thank you, sir. I think you answered my question. Okay, I will open it up to the Commission."

PLATT "I appeared in opposition to this case in 1969, 1970 and 1977. I want to make that clear. I am not stepping down from the case because at the time I was representing Wichita State University, which as an organization opposed the zoning change and the Community Unit Plan in support of the Neighborhood Association to the north. I am the one who represented them, and as far as I know, they are not here taking a position one way or the other, so I am going to remain on the Commission for this case."

MARNELL "I have a question of Mr. Krout. Who would the appropriate party within the City be to represent the City's interest in this. I see they are the applicants and the way the ownership is listed here is kind of confusing. I am not sure who owns it, if Michael Williams owns it, or if the City of Wichita owns it."

KROUT "John Philbrick is the Property Manager and he is the one responsible for the tenant and the lease, and he did file the application with Donna."

GOLTRY "Michael Williams is also an owner. He owns the other parcel. He is the dentist."

KROUT "He owns the corner and then the office tract, and I think that officially some of this landscaped area is on his tract, so he has to give permission for this change."

GOLTRY "That is correct."

MARNELL "I have a question for the gentleman that spoke in opposition."

MICHAELIS "Mr. Beldon, will you come forward, please?"

MARNELL "On the removal of that wall, is it only the wall to the west side that you have objections to, or is it the wall on the south side of the property as well?"

BELDON "It is mainly the wall to the west side, but the south side was put there at the same time, so I think the reasoning is the same. I think if you are going to really landscape that thing and make provisions so that it will be taken care of, I mean, really good, you could make that a much more beautiful corner that would attract people to these people. I have a lot of sympathy for them trying to start out. My first thought is, for that type of retail sales, I think they picked a poor location. We can't help that. But my first loyalties are to the homeowners."

WARREN "I would like, for my own personal satisfaction, to get a determination of ownership. It says here 'master lessor', and...who owns this property?"

GOLTRY "The City owns one of the parcels and the other parcel is owned by Michael Williams."

WARREN "Could you identify those for us?"

GOLTRY "Yes. (Indicating) That is the parcel that the City of Wichita owns (Parcel 8) and that is the parcel that Michael Williams (Parcel 9), the dentist owns."

WARREN "And there is a division of land in this?"

GOLTRY "Yes. Parcel 8 and Parcel 9. It is both parcels. The City owns one parcel and they own the other."

WARREN "How do we identify that on this little map?"

GOLTRY (Indicating) "Here is one parcel, if you follow the pointer around, that is the dentist's parcel, and this is the parcel where we are the lessor and Air Venture Capitals is the lessee."

WARREN "So it looks like he owns probably 70 per of the application area."

GOLTRY "He owns probably half of the bermed area. Let me clarify bermed. I say it is bermed because it is naturally bermed. There is a small amount of additional berming. It is very miniscule and not added to the height of it, except for

in a few small locations. When our landscape architect went out and did an inspection of it, he felt it would be difficult to remove much of the berming because of the fact that it is mostly naturally occurring and deals with the slope of the land. The screening fence is the other concern and that is why the recommendation was specifically to remove the screening fence."

WARREN "Okay. Now is all of the property under lease? All that isn't owned by the applicant is under lease by the applicant?"

GOLTRY "Yes, that parcel is. So he has right of title through lease."

WARREN "Yes, he does, as the lessee."

GAROFALO "I am inclined to agree with the Chair's comments. I am not inclined to support removing anything or putting anything in until there is some sort of a meeting of the minds with the owners and the lessee about who is going to be paying for what and where the cost is going to come from and all of that. I mean, who is going to maintain the landscaping, etc. I think there are too many ifs, ands and buts to be going ahead and tearing something down at this point."

HENTZEN "What it appears to me to be is that this group, us, have the authority to deal with land use, zoning and the Landscape Ordinance that was applied to this property years ago. They are asking to change what we did years ago. And that is all of the authority we have. This business about how much it is going to cost, or 'I want you to help pay for it', we have no authority to spend any City money or anything else. That has to go to the City Council and on the whole, we don't know what they will do, but I am just saying that this group has only the authority, I think, to either say no, you can't take that wall down, or yes, you can take the wall down. That is all we are trying to decide."

MICHAELIS "Well, I brought that up, so I will respond to it. It wasn't a question so much of do we have the right to determine whether this gets done; it is a land use issue. We sit here every day and approve areas all of the time and require much more stringent screening than this. It seems somewhat ironical now that we are looking at doing just the opposite."

The point I was trying to make was that I believe the intent of this is to be a public-private partnership, and if that indeed is the case, and if that indeed is in place, then I would be much more in favor of supporting that, but without knowing that there is a mechanism there to get it done, I would have a hard time saying 'let's tear it down'. That is where I was trying to come from with that."

WARREN "It is not unusual, whether we require it or somebody else requires that money be either be escrowed or that guarantees, in some manner, be made that certain things will take place. So I can't agree with you that if the City is going to become involved—and I haven't really heard the City say that—but if that is the case, well then they maybe then could be the guarantor of performance to the requirements that we may make. I think what I am hearing here now is that there has been promises made in the past and the performance didn't take place, so somebody, I think, is looking for a guarantee of performance and it is either going to have to be bonded in, escrowed in, or the City is going to have to step up and say that they will be responsible if he doesn't do it."

BARFIELD "He has already said that he can't do it."

WARREN "Well, then, we need a bond, a guarantee, escrowed funds or something."

WARNER "I don't ever remember at any of these meetings where we required an over abundance of landscaping, fencing or anything else, when we have asked the applicant if they could afford it. Nor have we had anybody guarantee it. Our requirements have been that this is what it is going to be, and if you can't do it, you can't use it that way. So, I don't see how this is any different. It is not our position here to try to require this gentleman or anybody else that they can afford to this; to afford to do what we are going to say what they can or can't do."

I agree with Commissioner Hentzen. This is a land use deal, and it is also a unique one. It is different than most that we have had because of its location, because of the use and because of the involvement of the City of Wichita. Therefore, I am not so sure that we can't—if this is an ugly fence—take the fence down and put up landscaping. Require like it says, do it with an architect and do it right. And if they can't do it right and can't afford it, hey."

GAROFALO "I tend to see where I maybe do agree with that. The only thing is that we have the applicant here that says that he might want to go out there and tear the fence down, and we do require certain things. If we want to require a landscaping to go in there, he is telling us that he doesn't know where the money is going to come from to afford to do all of this stuff. We have the applicant himself saying that."

WARNER "But if we make these requirements that they can't fulfill, then they are going to have to leave things alone, aren't they?"

GAROFALO "Well, then we have a requirement that he can't tear the fence down, then, until you know that you can do the rest of it."

MICHAELIS "Mr. Krout, did you want to make a comment?"

KROUT "I was going to suggest something along the lines that I agree that looking for a financing is something that you usually don't do. You can say that you can add to this condition that the fence cannot come down until the plan is approved, and then if the fence comes down and I think the plan could be approved administratively and we would be glad to invite homeowners' to look at it, or you could bring it back to the Planning Commission, the Planning Commission could look at it, and then they could tell you what they thought of it here.

But in either case, if they took the fence down and they didn't put landscaping in, that is a violation of the CUP, and yes, it is a little unusual because it is City property, but I think that it is also the ability of these homeowners' to be watchdogs and to come down to the City Council chambers and to say 'you are violating your own ordinance' if the landscaping is not there. So I think that the tools are there and I would suggest to go ahead and approve it."

MARNELL "Mr. Krout, it might be helpful if you could kind of refresh everybody's memory on what kind of screening would go along there, what kind of landscaping, if this was a brand-new project coming before us today."

KROUT "Well, if this flat piece of ground, which is what you usually see in Wichita, then we would require a 3-foot shrub row, and trees approximately every 40 to 50 feet along the edge of the property. If it was new, we would probably have the requirement for trees to be internal in the parking lot because of the size of the parking lot. We don't usually do that after the fact with projects that are just remodels like this, but in this case, because of the grade change, the purpose of that screening is already taken care of and wouldn't require the shrubs if it came in as a new project because of the grade change, the most immediate parking is already hidden from view.

The purpose of that screening is to hide the bumpers and headlights, basically, and to prevent them from shining out, but that is not going to happen on this site because you are still going to have the grade change there. So we would probably just be requiring trees to be planted along the edges and if it was new, also in the parking lot itself."

WARREN "Well, in response to Commissioner Warner's concerns, there is a difference in this case and it is because it has been a long, ongoing case, and apparently has been one that has been without performance in many cases as to promises in the past. So that, I see as somewhat different from most of the cases we have. The other thing is that I am going back to Chairman Michaelis' position that we can't make these requirements. There is no way we can do that. We are land use people. But my decision, how I vote, has got some discretionary power, and whether I use that depends a little bit on whether I think performance can be made. If we are going to subject the people out there to the same thing we have had in the past, then my discretionary power in my decision is going to reflect that."

BARFIELD "I have had the opportunity to talk to some of the property owners to the west there and as a matter of fact, that is how I actually found out this case was coming before us. Most of the people I have spoken to have voiced opposition to this, and they go back a long way. They go back to when this thing was first brought before the MAPC and the City. Some of these people fought to have that screening put in place. They are in total opposition to having it removed. I have to respect that. I think, from my own standpoint, when we look here and we look at several questions that are unanswered at this point in time, even to the extent of who actually owns the property, who is going to maintain it. I am in a position to make a motion to deny the request."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The surrounding area is an unusually diverse mix of residential, commercial, institutional and park uses. Continued commercial use is in character with the commercial uses to the east and south. The property has been zoned "LC" with the "SF-6" (formerly labeled "AA") buffer since 1965. The suitability of the subject property for the uses to which it has been restricted: Continued commercial use is in conformance with the existing "LC" zoning for most of Parcels 8 and 9. The use of the "SF-6" strip for parking has been approved by as a use exception (BZA 2-70 for non-required parking; amended to be for required parking by BZA12-80). Extent to which removal of the restrictions will detrimentally affect nearby property: The removal of the screening wall and any reduction in the height of the berm will make the property more visible from the residential uses across Oliver from the shopping center. However, the use of the 200-foot buffer strip along Oliver as a 35-foot wide landscaped street yard and parking provides a larger degree of buffering for the residents across Oliver, a major arterial street, than in most similar situations. Length of time the property has remained vacant as zoned: The property was vacant for several years, but has recently been occupied by new commercial businesses. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed change is in conformance with the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan and would encourage realization of the goals and strategies of the Northeast plan to reestablish general retail uses in the neighborhood along the 21st Street corridor. Impact of the proposed development on community facilities: None.) I move that the request be denied.

BARFIELD moved, **MICHAELIS** seconded the motion.

PLATT "First, I have a question of Mr. Krout. Have the owners of this property applied for the amendment to the CUP?"

KROUT "Yes. Mr. Williams at the corner and the City of Wichita by John Philbrick, have both requested it."

PLATT "They both requested it?"

KROUT "They both signed the application."

GAROFALO "I have a question of Marvin also. Marvin when you were talking a little bit ago, were you suggesting that we should approve the removal of the fence on the condition that they can do the rest of the work?"

KROUT "There again, you are asking for some kind of financing guarantee. I don't think that is necessary. I think the plan should be approved so everybody knows how it is going to change and what it is going to look like when the fencing comes down and what is intended to go in. Then it is up to the City and the tenants and Mr. Gilkey to figure out how to get that done. If they don't do it, it is a violation of the Zoning Code."

JOHNSON "Then in that case, Marvin, would it be best if this thing would be postponed to where whoever is going to put the plan together, whether it is the City of Wichita or whoever, would meet with the neighbors and get the plan approved prior to us making a decision. If we deny it today, they would have to resubmit an application, but if we defer it, and they come up with a plan that the majority of the Commission would agree on, it could be approved with something that you could look at."

KROUT "So you would like to maybe postpone it for 2 weeks and have a more precise plan than the one that is in front of you now, and have an opportunity for the neighbors to look at it?"

JOHNSON "I am just saying wouldn't that be a better case than just denying what they are wanting to do? It sounds like everybody has a concern about whether it will be put back. Yeah, we could vote to put it a plan approved by you, but I am not so sure that in this case, that would work."

KROUT "Yeah, and that is what I said. I think that should be able to be done in two weeks. I don't think it should take that long for a landscape architect to refine this plan."

LOPEZ "Looking at it, their concern is lack of visibility. Lack of being able to advertise the tenants in the facility. I was discussing here with Commissioner Johnson, couldn't they improve signage on that corner to rectify that problem and assist them; directional signage as to what is actually what is in the development itself. I drive by there, too. I don't remember too much signage there."

KROUT "You are talking about a sign out here in the street?"

LOPEZ "On the corner, yeah."

KROUT "I don't know if the applicant ever discussed that. That would also require an amendment because it is zoned residential now and I don't know how the homeowners' would feel about that."

LOPEZ "It was just something to throw out for discussion."

MICHAELIS "I think this is kind of unusual, the fact that we have two owners and neither owner is here to speak on it. Usually, the owner in the request has something to say about it. My position is that I would either be in favor of postponing it, or otherwise I will vote to decline it because there are just too many unknowns."

WARREN "Let me ask a question of Marvin. I think what I am hearing you say is because the City of Wichita entered into the application and has, in fact, become an applicant, then our requirements as a condition of approval would be incumbent upon that, and that they, then, could be held responsible. Now, are they there as an owner or just a lessor. Quite often, I leave property to people and it is unconditional. I have no responsible to that. I need to know where the City is at on this. Are they a responsible agent or have they assigned all of their interests through lease, and therefore not be responsible. We have our attorney here, maybe he can help. If we are talking about encumbering the City by virtue of what we do, I have no problem with what we do."

GAROFALO "Mr. Chair, I am going to make a substitute motion."

SUBSTITUTE MOTION: That the item be deferred for 2 weeks.

GAROFALO moved, **LOPEZ** seconded the motion, and it carried with 9 votes in favor. Barfield Platt and Warner opposed. Osborne-Howes was not present.

10. **Case No. CON2001-00013** – Michaelis Real Estate #10, LLC c/o Mark Michaelis (Owner); Brad Murray Rentals, LLC, Cricket Communications, Inc., and ITSROE.com, Inc. (Applicants); Austin Miller PA c/o Kim Edgington (Agent) request a Conditional Use for a wireless communication facility on property described as:

The East 71.55 feet of Lot 7, except the South 25 feet thereof, Sager Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located south of Pawnee and east of St. Francis (2550 S. St. Francis).

SCOTT KNEBEL, Planning staff pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 150-foot high self-support lattice tower (see attached Site Elevation) by Brad Murray Rentals, LLC for use by Cricket Communications, Inc and ITSROE.com, Inc. The proposed site is zoned "LI" Limited Industrial. The Unified Zoning Code permits Wireless Communication Facilities up to 150 feet in height in the "LI" Limited Industrial zoning district with an Administrative Permit; however, the request for an Administrative Permit at this location was denied due to its lack of conformance with the Wireless Communication Master Plan (see attached letter on CON2000-00057). Therefore, the applicant is appealing the decision to deny the Administrative Permit to the MAPC through this request for a Conditional Use.

The proposed self-support lattice tower would be sited on an approximately 4,750 square foot area located south of Pawnee and east of St. Francis (2550 S. St. Francis) on vacant industrial land (see attached Site Exhibit). The site plan shows a compound enclosed with an eight-foot high solid screening fence with the tower located in the center of the compound and the ground-level communication equipment located in the northern portion of the compound. The site plan shows that access would be provided to the site through a 15-foot wide access and utility easement to St. Francis, a paved local street. No landscaping is shown on the site plan.

The character of the surrounding area is that of mixed uses with single-family residences across railroad tracks to the east, vacant industrial land to the south, apartments to the southwest, the Pawnee Plaza shopping center to the west, and industrial uses to the north, including a 110-foot high monopole tower. The properties to the north and south of the site are zoned "LI" Limited Industrial. The properties to the east are zoned "TF-3" Two-Family Residential. The properties to the west are zoned "GC" General Commercial.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF Engineering Evaluation). The justification for the request indicates that the existing monopole tower located approximately 300 feet to the north does not provide sufficient height. The justification also indicates that reconstructing the existing monopole would cost more than constructing a new tower (see attached letter).

The application also indicates that the proposed tower is needed by ITSROE.com, Inc. to provide wireless broadband data transfer service to the area. The justification (see attached letter) indicates that a minimum antenna height of approximately 120 feet is needed to provide wireless broadband service to the area.

While not indicated in the application for the Conditional Use, the application for the Administrative Permit indicated that the owner (Sprint) of the 110-foot monopole tower located approximately 300 feet north of the subject property would not allow reconstruction of the existing tower under any circumstances (see attached letter). However, when planning staff contacted Sprint regarding reconstructing the existing tower for the placement of antennas for Cricket Communications, Inc. and ITSROE.com, Inc., Sprint indicated that they would be willing to rebuild the tower at the expense of Cricket and ITSROE.

CASE HISTORY: The site is platted as the Sager Addition, which was recorded on July 15, 1953.

ADJACENT ZONING AND LAND USE:

| | |
|--------------|---|
| NORTH: "LI" | Industrial uses, including 110-foot high monopole tower |
| SOUTH: "LI" | Undeveloped |
| EAST: "TF-3" | Single-family residences |
| WEST: "GC" | Shopping center & apartments |

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site is proposed through an access easement to St. Francis, a paved local street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure

some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. There is an existing tower located approximately 300 feet north of the proposed tower that could be rebuilt. While the application indicates that the construction and demolition costs of a rebuilt tower are more costly than constructing a new tower, the applicant has not provided any cost information pertaining to the ground lease and antenna space lease so that the entire cost of the two alternatives can be compared. Second, the proposed 150-foot high tower does not minimize the height, mass, or proportion of the facility. Cricket Communications, Inc. and ITSROE.com, Inc. have indicated that the minimum height required for their antennas are 130 feet and 120 feet, respectively; however, the tower is proposed to be constructed at a height of 150 feet. Third, the proposed self-support lattice tower does not minimize the silhouette of the facility. A monopole tower has a significantly smaller silhouette than the proposed lattice tower. Finally, no landscaping is proposed to partially obscure the tower from view from the residential area to the east. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be **DENIED**; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 130 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. A landscape plan shall be submitted for approval by the Planning Director that provides three shade trees to be planted and maintained adjacent to the east side of the compound.
- G. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- H. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- I. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airport Engineering for the City of Wichita prior to the issuance of a building permit.
- J. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- K. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is that of mixed uses with single-family residences across rail road tracks to the east, vacant industrial land to the south, apartments to the southwest, the Pawnee Plaza shopping center to the west, and industrial uses to the north, including a 110-foot high monopole tower. The properties to the north and south of the site are zoned "LI" Limited Industrial. The properties to the east are zoned "TF-3" Two-Family Residential. The properties to the west are zoned "GC" General Commercial.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial and could be developed with an industrial use. Wireless communication facilities up to 150 feet in height in the "LI" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A Conditional Use may be granted to permit a wireless communication facility in the "LI" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping on the site does not adequately obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. There is an existing tower located approximately 300 feet north of the proposed tower that could be rebuilt. While the applicant has indicated that the construction and demolition costs of a rebuilt tower are more costly than constructing a new tower, the

applicant has not provided any cost information pertaining to the ground lease and antenna space lease so that the entire cost of the two alternatives can be compared. Second, the proposed 150-foot high tower does not minimize the height, mass, or proportion of the facility. Cricket Communications, Inc. and ITSROE.com, Inc. have indicated that the minimum height required for their antennas are 130 feet and 120 feet, respectively; however, the tower is proposed to be constructed at a height of 150 feet. Third, the proposed self-support lattice tower does not minimize the silhouette of the facility. A monopole tower has a significantly smaller silhouette than the proposed lattice tower. Finally, no landscaping is proposed to partially obscure the tower from view from the residential area to the east.

5. Impact of the proposed development on community facilities: Access to the site is proposed to be from St. Francis, a paved local street, so no negative impacts on community facilities are anticipated.

KNEBEL "This is a request for a Conditional use to permit the construction of a 150-foot high self-support lattice tower for use by two applicants. The applicant gave me some paperwork that they would like you to have."

MICHAELIS "Let the record show that Dr. Platt is stepping down from this case."

KNEBEL "The two applicants indicated in the application are Cricket Communications and ITSROE.com, which is a broad-band wireless service, which you have had before you on some applications before. This particular property is zoned Limited Industrial. That zoning classification does permit 150 foot high towers with Administrative approval. The staff considered that request and did not approve it. The documentation is attached to the staff report, giving the reasonings behind it. I will go over those again in a minute, when I get to the recommendations on this particular request.

The area to the east is residential, the area to the southwest is multi-family. Immediately to the north and south is vacant. It is zoned Industrial. There is some industrial properties due north, including an existing monopole tower; and then to then to the west is a rather large shopping center. As I mentioned, it is designed to be a self-support lattice tower. (Indicating) This is an indication of an alternate site at a lower height, and then this is a indication of how this particular site is an improvement over that alternate site. If you go back and forward, you can see that there are additional areas in green and yellow that are provided. As I mentioned, the applicant indicated that Cricket Communications and ITSROE.com are requesting to locate on this tower at a height of 130 feet for Cricket and 120 feet for ITSROE.

One of the items that staff brought up in the recommendations section is that one of the items that doesn't fit the criteria is the third item is that the proposed tower is a lattice tower rather than a monopole. The plan does say that the silhouette should be minimized. I just took an example of where we have here locally a lattice tower and a monopole next to each other, and you can see that the silhouette of the monopole is much less than that of the lattice tower. I took a picture of it from a distance, and then I took a picture of it up close as well. I just wanted to show that to the board. We have had some discussions with this particular applicant in the past that they feel like that is a subjective statement. I just wanted to put a little objectivity on the screen for everybody to look at.

The other problems that staff has with this and the way that we feel that it does not conform to the Wireless Plan is that there is the existing tower that I showed previously on the site, just to the north a few hundred feet. We have contacted the owner of that particular tower and they have indicated that they are willing to allow the communication companies in this instance that have indicated the need for antennas in this area to rebuild this at their expense. The expense of that is obviously greater, due to the fact that you would be adding the demolition expense to the cost; however, the applicant has not provided us any information that shows the actual cost that the communication companies are going to be incurring by locating on the proposed new tower. So we don't have anything there to compare the true costs of those two alternatives.

The second problem that we have is that the new tower is proposed to be 150 foot high. The Wireless Plan says that we should minimize the height of towers. The two communication companies that the applicant indicated needed 130 feet and 120 feet; however, they requested an additional 20 feet. At the District Advisory Board hearing, the applicant's agent stated that Cricket Communication had changed their needs to 150 feet. The applicant has since given me a letter from yet a third company; a letter that was written the day after the District Advisory Board met that says that it is actually this third company that needs the 150 feet, not Cricket Communications. It is a little confusing, but that is the indication that the applicant has given. I will let them address that to you.

I have already mentioned the issue that staff has regarding the problems with the silhouette of the facility. Finally, in this particular picture, it does look like there area lot of trees to the east. There are. I am not trying to say that there aren't any trees to the east, but those trees to the east are located on the property of the people immediately across those railroad tracks who would need some screening from this. The applicant has not proposed to put any screening on their property to provide any screening of the lower levels of that tower from those residential properties. That is another reason that the staff is recommending this request for denial.

Again, like the case previously this afternoon, we did list some recommended conditions if the Planning Commission does find that this is appropriate that the tower should be subjected to. Those are the same conditions, with the exception that we discussed previously that we recommended the monopole be shortened to 130 feet. We do have some new information there that I think the Planning Commission would be willing to consider that. It is not very helpful information. It is a company saying that they do need 150 feet. I don't have any information to rebut that, but we have

not had any time to review it either. Then, if it were to be constructed at 130 feet, we would recommend that it be designed so that it could be extended in height if a future carrier came along. So that kind of makes it so it is maybe worthwhile to go ahead and approve it at 150 feet. We do also add the requirements of landscaping in the form of shade trees along the east side and the FAA approval. As I mentioned before, the District Advisory Board heard this case and they made what I think was a rather confusing recommendation. I will just read it to you. This is exactly what was said. They moved to deny the request until Conditions A through J in the staff report are met as located in their denial, or brought forth for negotiations with the staff. I am a little unclear with that. They did discuss it and there was considerable discussion among several members of the board. They felt that the request was appropriate. I will say that for those who didn't have the benefit of attending the meeting. With that, I will make myself available for questions."

MICHAELIS "Are there any questions? Seeing none, thank you, Mr. Knebel. Could we hear from the applicant? Have there been any ex-parte conversations? Okay. I would just like to clarify that since the applicant/agent's name is Michaelis Real Estate c/o Mark Michaelis, we are in no way affiliated on this."

KIM EDGINGTON "I am with Austin Miller, here representing multiple applicants on this case; Brad Murray Rentals, Mark Michaelis Real Estate and ITSROE.com. Again, the District Advisory Board meeting the other night was a bit confusing. My recollection of the meeting was generally that the District Advisory Board was in favor of this, if we did follow the recommendations that the Planning staff had set out. I do apologize that at that meeting I did misspeak that it was Cricket Communications that needed to increase their height. It was a different carrier; I did have some misinformation. There has been a letter submitted by a third carrier, requesting that 150-foot height. I think we can all agree, at this point, that the difference between 130-foot and 150-foot towers is fairly negligible."

There is a provision in the Wireless Communication Plan that if the top 20% of that tower is unused for a one-year period of time that it must be removed. In fact, if no other carrier would come along to take up that 150-foot spot, we would have to take that 20% down.

To touch on some of the points that staff made, Sprint, who owns the tower north of this has agreed that Cricket Communications or ITSROE.com could rebuild their tower; however, as I am sure most of you are aware, Cricket Communications is not building any towers in the Wichita area. Every tower that they have had newly sited is subcontracted out. ITSROE.com is not funded, at this point, to rebuild a tower such as this one. I think you have two cost estimates on what it would be to tear down and replace that Sprint tower.

Sprint has stated on the record that they will not allow Brad Murray Rentals to remove and rebuild their tower because Sprint Land Company and Brad Murray Rentals are in direct competition with one another. However, hypothetically, if Cricket Communications all of a sudden decided that they were going to build towers, they could go in there, pay to remove the Sprint Tower, pay to build a new tower; however Sprint would maintain ownership of that tower. I think, as sensible business people that that is not something that is their best interest that Sprint would maintain ownership and control management of the tower, which is definitely not in the best business interest of a company like Cricket.

There is, if you went by this site a COW, a cellular on wheels, located there right now, at 106 feet. It was an emergency 'stop gap' procedure that was approved administratively; however it is not adequately serving the needs of Cricket at this time, which is why we are here today. Unfortunately, there are not other tall structures in this area to locate on; no apartment buildings, office buildings or the like. We do have engineers here from Cricket that will address any concerns regarding their coverage needs at this site. This is in Limited Industrial zoning, which, as Scott mentioned earlier, would allow a 150-foot tower with an Administrative permit; however that was denied and that is why we are here today.

The tower will be designed to hold a minimum of 5 carriers, and as you are all aware, Brad Murray Rentals is in the business of renting out tower space. That is in his best interest to locate as many people on this tower as he can get. That is exactly what we will desire to do. Today was the first time I had seen the photo of the monopole versus a lattice tower. Again, I am not sure that it is an entirely equitable comparison as the monopole tower had a single antenna array and there were multiple antennas on it. There was not any landscaping proposed for this particular site, given the fact that it is in Limited Industrial zoning. I would be glad to answer any questions that the Commission might have. Again, we have representatives here from Cricket to answer any questions on the engineering end of this."

WARREN "If this were approved, do you agree with Item C, to go to the monopole? Do you agree to do that?"

EDGINGTON "We would be agreeable to do that."

WARREN "Okay. Although I don't think I could ever tell the difference between a 150 foot and a 165-foot pole, where to you stand on that?"

EDGINGTON "We are requesting the 150 foot because we do have one company that requires that."

WARREN "So you reduced your original request from 165 down to 150?"

EDGINGTON "We had never requested 165 feet. That was on a tower earlier."

WARREN "Oh, okay. So 150 foot is what you are requesting?"

EDGINGTON "Right."

WARREN "And probably you could live with 3 trees?"

EDGINGTON "Yeah. We are not opposed to landscaping."

MARNELL "I guess I would differ with you a little bit, Kim, on that photo. I do think the lattice tower is quite a bit different than the monopole tower."

EDGINGTON "It is different. I agree."

MARNELL "What I want to ask you is, do you see any circumstance anytime when any of these carriers are going to agree to rebuild a tower rather than building another one?"

EDGINGTON "Not if the case is that the original owner maintain ownership."

MARNELL "Yeah. I have mentioned this to Marvin before. I think we have a flaw in this Wireless Plan. It doesn't give a latitude. I think it gives an exemption out if it is going to be more costly. Well, it stands to reason that developing one standing there by itself is cheaper than tearing one down and building another. I think we ought to consider modifying the Ordinance or we are going to have that antenna farm arrangement when we have disputes of ownership like this. I know what dealing with Sprint is like."

KROUT "I guess it is more expensive, but the Ordinance does not say that because it is more expensive you have no choice except to approve the less expensive alternative. And that is our point here. Yes, it may be more expensive, but we don't really have a cost comparison. But when you are going to put two towers within 300 feet of each other, it seem like that is the sort of time that maybe someone ought to go to more expense in order to rebuild that existing tower. You do have a tower owner who is willing to do it. The applicant is really Brad Murray who wants to build a tower. Obviously, he gets nothing out of that picture, but the ordinances here, if you remember, at the carriers not at the developers. If Cricket has a problem, they can solve their problem by paying the cost of rebuilding the tower."

And you can deny it because you think it doesn't need the alternative plan, even though it may be more cost prohibitive in this particular case."

GAROFALO "Clarify for me, Marvin...the plan does say that if there is an available tower within the area that can be used that it requires them to use it."

KROUT "Yes. And if there is an alternative, they are not permitted to build a tower. That is not even a choice. In this case, there is an alternative, but it is more costly, and they are asking you to approve it. But you can either approve it or deny it. The fact that it is more costly, if it means to you grounds for denial, then you can deny it, but the staff position is that there is an intent in the plan and if one of their sites out of 40 sites is going to be a little more expensive than the others, that is the intent of the plan to say that we are not going to try to do the minimum cross scheme and end up with an antenna park. "

HENTZEN "I want to ask.....I went down and looked at that, and the tower that is being built there now, or near there, I think it is the one they referred to as 300 foot north, that is a lattice tower that they are building now, isn't it?"

EDGINGTON "No. There is an existing pole that has been built for probably six months."

KROUT "No, they have put up a temporary one. It is on a trailer."

EDGINGTON "Right. That is the temporary Cellular on Wheels. It is kind of a combination lattice work and it has some guy wires anchoring it."

HENTZEN "Well, if it is a tower on wheels, is there going to be a tower built at that spot? A permanent tower?"

EDGINGTON "It would be farther to the east than where that temporary structure is located. It would be backed up as close to the railroad tracks as possible."

HENTZEN "Do you know whose tower that will be?"

EDGINGTON "That will belong to Brad Murray Rentals."

HENTZEN "How high is that going to be?"

EDGINGTON "One hundred fifty feet. That is what is proposed for here, too."

HENTZEN "Yeah. So now we are talking about another tower?"

EDGINGTON "Well, if the 150 foot tower were built, the C.O.W., the temporary one will be taken down."

HENTZEN "Okay."

MICHAELIS "It is not an additional one."

EDGINGTON "No, it is not a third tower."

HENTZEN "Well, then, what is the problem here? You need a tower and the only thing there is temporary, and it will be taken down if you get a permanent tower. Is that right?"

EDGINGTON "Right, but there is the existing Sprint tower that is 300 feet to the north. The monopole, which, if I might reiterate, Mr. Chair, that Sprint has stated unequivocally that they will not allow Brad Murray Rentals to rebuild that tower and Cricket Communications is not building towers. They have not built a single tower in the Wichita market and they don't intend to because of the significant cost involved in taking down towers and paying to build towers that they will not own. And then they could turn around and be charged by Sprint to locate their facilities on a tower that they paid to build."

HENTZEN "Okay. The temporary tower that is there is owned by your applicant?"

EDGINGTON "It is owned by Cricket Communications, yes."

HENTZEN "Yes. And what you are saying here is that you want permission to build a permanent tower right near that location?"

EDGINGTON "Yes, sir. About 50 feet east of it."

HENTZEN "Well, that temporary tower, is that good for 5, 10 or 20 years?"

EDGINGTON "No, it is only approved through June, I believe, is the date in which it has to be removed. It is a stopgap procedure. It is merely filling a hole for them at this point. But because of the costs involved, and they do use those, they move them to different parts of the country and different parts of their network. Kim Wimmer from Cricket Communications will probably be able to answer questions about the temporary facility better than I."

KIM WIMMER "The reason this Cell on Wheels has been brought into this market is for coverage purposes. Obviously, we had a launch day with Cricket Communications on February 28. There is a hole there. We need height. The reason Cricket does not elect to own a tower is because it costs an enormous amount of money and you have to bring people in to maintenance those towers, obviously. Mr. Murray is in the tower business. We do have a lease with Mr. Murray to co-locate on his tower should, of course, this be approved. That is what Cricket has intended to do. That is what they want to do."

Now, I have contacted Sprint myself. The only thing available on that tower is 70 foot. That doesn't do anything for us. The 106 that is currently there, which is the Cellular on Wheels doesn't give us a whole lot of coverage, but it is enough to get people on air for this launch date. So they are not losing coverage. The sales market, and you have probably seen the green couch everywhere, on the billboards, on TV, etc. The sales is \$29.95 unlimited access. They are trying to keep their cost down so they can give people in the local markets service. Those of us who do not travel out of here; soccer moms—you know—and it is marketed towards teenagers. Teenagers are carrying these phones now. They don't travel long distance, so they don't need long distance, even though the long distance is available in a pre-pay.

So Cricket does not want to own any towers. Sprint will allow us to rebuild that. I have been in communication with them. For us to go in to rebuild the tower such as it is which is made by Northern Technologies, it is a star base. I don't know whether anyone has taken a look at that, and I didn't see the picture because I was sitting behind the podium. It is a star base—a new technology. I have never seen anything like it. It looks like it is a tower sitting on top of a space ship. I have asked Sprint and the engineers what it is going to take to rebuild that tower. I haven't had any communication with them since February 1. And we have the documentation to show you. I have provided it to Kim did you want to see that documentation.

It would be \$312,000 to rebuild that tower and that is just to take that tower out of there. That is not the foundation itself. I don't know what it would be to build another Northern Star tower, if that is what they want. But we would have to rebuild it and we would also have to pay them rent, monthly for 30 years."

HENTZEN "Okay, I have determined now what your application is. I would like to ask Scott to step up and just say to us why they have recommended denial?"

KNEBEL "We have recommended denial for the four reasons that I went over previously, the first of which we have discussed here at length regarding the rebuilding of the tower."

The second of which is that the request is for 150-foot high tower. I understand that the applicant has provided documentation here just before the meeting saying that they do need 150-foot height, but the plan indicates that the height should be minimized. The application requested 150 feet but indicated that the maximum height they needed was 130.

The third reason is that the proposed tower was a self-support lattice tower, which is similar to the one on the right. The plan indicates that the silhouette of the tower should be minimized. The applicant could have proposed a monopole

tower, while if you added a couple more antennas would increase the silhouette of the left. I don't think it would still quite reach the width of the one on the right. That was the third reason for recommending denial.

The fourth reason is that the plan clearly states that the applicant should provide screening for ground-level view, either in the form of buildings or in the form of trees. The applicant specifically did not propose any of that landscaping, so that was the fourth reason for recommending denial."

HENTZEN "Mr. Chair, what if we just proposed building a 50 or 60 foot wall around this thing, but if it is so gross that nobody wants to look at it, or if it offends them if they see it in the distance, we are going to have to screen it."

KNEBEL "I think building a 50 or 60 foot wall would be exaggerating the need in this situation, but I think a 50 or 60 foot tree would probably accomplish the same purpose."

HENTZEN "Sure."

MICHAELIS "With all due respect, gentlemen, I think we are getting off of the target here a little bit. We still have a minute and 32 seconds left. Kim, do you need any additional time to complete your presentation?"

EDGINGTON "I just want to repeat again that we have agreed that if the Commission so desires, we would build a monopole. The main reason that no landscaping was proposed on this site is that there is already significant existing landscaping and we felt that that was kind of a duplication of efforts when the trees existing are mature 40-foot trees. What we would put in would be significantly smaller than that with a long maturing time."

WARREN "If you were granted 150 foot height as approval, would there be any need for this 25% on Item E?"

EDGINGTON "I believe that that is still a requirement of the Wireless Communication master plan."

WARREN "So it would be 150 foot plus a 25% potential."

EDGINGTON "I apologize. It is not a requirement, and it has been..."

WARREN "So we most likely would delete that portion of it then?"

EDGINGTON "More than likely. Scott can probably answer that better than I, but I would guess that they would not require us to increase it."

MICHAELIS "Okay. Any further questions of the applicant at this time?"

LOPEZ "Kim, I heard you say earlier that you had no problem with the monopole and then you just stated that you had no problem with the landscaping of the trees?"

EDGINGTON "We will add them. In the initial application, we just felt like that was a duplication of existing efforts and that is why they were not included."

LOPEZ "And the only reason there is a request for 150 foot is because one of the providers is requesting that, right? So if that provider doesn't get the 150-foot, where are they going to go? How are they going to work it?"

EDGINGTON "They are going to have to do what they have to do. I think, as we discussed earlier, the 20 foot is fairly negligible."

MICHAELIS "Thank you, Ms. Edgington. Is there anyone else here wishing to speak in favor of this application? Anyone wishing to speak in opposition?"

EARL POWELL "I own the property just south of the proposed pole. I was never talked to about this. I would not be in favor of a lattice pole for sure. I had proposed to put a building on Lots 8, 9 and 10 and with that being that close, if it fell over, who would pay for the damages?"

MICHAELIS "If you are asking that as a question, it is a question we can't answer."

POWELL "Well, nobody talked to me about the pole. A year or so ago, they were going to put a pole on my property. They turned it down and it was directly south of it and then 25 foot just south of the one that they proposed. So I don't see any point in allowing them to put another one right there. Especially one with a lattice. They have guy wires on there that would stick out and they are not that sturdy."

MICHAELIS "Are there any questions of the speaker? Thank you, sir. Is there anyone else wishing to speak in opposition to this? Okay, Ms. Edgington, you have two minutes for rebuttal."

EDGINGTON "In response to Mr. Powell's comments and questions, the tower owner plus each of the carriers are required to carry liability insurance on this. I will just say from personal experience two years ago as I drove through Moore, Oklahoma just after a significant tornado had been there, I saw lots and lots of houses and buildings leveled, but I

saw lots of standing towers. So these are significant structures; they are engineered to withstand some very high wind speeds plus ice being on them, so the danger of that happening is very, very marginal. I would be glad to entertain any other questions."

GAROFALO "For my clarification, maybe others, but are you in agreement then....if this were to be approved, you are in agreement to the monopole and you are in agreement to the 130 feet?"

EDGINGTON "To the monopole, absolutely. We are still requesting the 150 foot because of the additional carrier that we have at this time that requires the 150-foot level."

GAROFALO "And is there anything else in the conditions that you don't agree with?"

EDGINGTON "No, sir."

MICHAELIS "Any further questions? Thank you, Ms. Edgington. We will bring it back to the Commission."

MARNELL "I'll tell you that this one troubles me. It is not the tower itself or the height, there isn't a lot of difference between 130 and 150. I don't think very many people can pick that out, but not too long back, we had a case like this down off of maybe Pawnee or 31st Street where we were going to have two of them setting adjacent. That ends up being antenna farms in the city. Antenna farms out, like by Colwich seem very appropriate and a very planned move. When you put them in the same area, that is bothersome. I know sometimes costs get higher because of these things, but if we are ever going to rebuild any of these towers for co-location, this is the kind of an example of one that would be appropriate. I think it is because it within the city, and even though I think it is well removed from the residential area, I still think a monopole would be appropriate if it ends up being approved."

This one, the idea of it being 200 feet from another one is really the troubling aspect of this. It is not the location, the location is fine. It is just that there is already a tower there. I think sometimes it is going to be more expensive to locate at the same site, and I think that we can't, while making these land use decisions, get involved with who the owners are. So I think my tendency is going to be to vote against this; however, if someone makes a motion to approve this, the one thing I don't think it needs is any trees on the other side of it. I was down there and looked at it, and that is not going to add anything to the screening. My problem with this is just that there is another tower there, and Sprint probably is very hard to deal with. Anybody who has dealt with them before would know that. But I don't think that becomes our issue."

MICHAELIS "I would like to echo, I guess, some of those sentiments because I think Mr. Ferris opened my eyes earlier today when the realization came in that none of these companies are really willing to work together and we may have six or seven communications in town today and next year there may be 20 and here we go again. We will all be back to additional towers. That is kind of scary."

MARNELL "I want to add one last thing to what we are discussing on this. The issue that we finally came down to on that one on 31st Street also was not a case of economics of being able to build a tower. They didn't have the space, and the other party was unwilling to even cooperate. So there is some cooperation here that may not be the kind that somebody would like, and unlike the one we just did out west where there wasn't physical room to locate facilities, this one looks like an excellent one to rebuild if there is ever going to be one, or else we have a bad premise of the whole ordinance."

WARREN "I think the record will show that I generally line up pretty well with Commissioner Marnell, but this is going to be the exception. I think, No. 1, our tower ordinance puts a tremendous lot of pressure on the free enterprise system. First we say we aren't going to have government towers, we are going to have free enterprise here. Then we go in and say that we are going to give some guy because he got there first, the advantage of just dominating, just absolutely dominating the market. That takes away the whole competitive nature of what we wanted this system to be run under."

I look at that location down there, and I agree that generally 300 foot apart would be questionable, but at that location, right up against the railroad tracks, and I am kind of with this like I am with automobile sales in a community, I don't find these towers that offensive. I am having a hard time with it. In fact, when I talk to people and say 'where would be the closest monopole tower to your house?', they don't even know where one is. It is just hard to figure it out. So I am going to make a motion to approve."

MOTION: I move that we recommend to the governing body that the request be approved, subject to the following:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. The applicant shall obtain all permits necessary to construct the wireless communication facility, and the wireless communication facility shall be erected within one year of approval of the Conditional Use by the MAPC or governing body, as applicable.
- C. The support structure shall be a "monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least four wireless service providers.
- E. A landscape plan shall be submitted for approval by the Planning Director that provides three shade trees to be planted and maintained adjacent to the east side of the compound.

- F. Revised site plans and elevation drawings indicating the approved location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- G. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- H. The applicant shall obtain FAA approval of the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. Any violation of the conditions of approval shall render the Conditional Use null and void.

WARREN moved, **MCKAY** seconded the motion.

JOHNSON "Scott, could you come back up, please? Now, by reading your comments about why you are denying it would be that it is over 130 feet; it was a lattice-type tower, and the landscaping. If this plan would have come in here as a 130-foot tower and not a lattice-type and had the landscaping, would you have been in support of it?"

KNEBEL "I think we would have had the same recommendation that we had previously where you had an existing tower. We would have still recommended it for denial, based on the fact that the existing tower could be rebuilt. In fact, we did. It came to the Administrative Staff first, and that was our recommendation."

MICHAELIS "Is there any other discussion? All right, so the motion on the floor is to approve with the modifications listed."

VOTE ON THE MOTION: The motion carried with 6 in favor (Johnson, Warren, Coulter, Michaelis, Hentzen and McKay) and 5 opposed (Marnell, Warner, Lopez, Garofalo and Barfield). Platt abstained. Osborne-Howes and Blake were not present.

Barfield left the meeting at 4:15 p.m.

MCKAY "Mr. Chair, while Donna is getting ready for the next item, according to our agenda, it says that we are going to adopt the Unified Zoning Code today?"

KROUT "You aren't expected to take any action today."

MCKAY "Okay. So there will be no action? Okay."

11. **DR2001-02** – Adoption of the March 8, 2001 Edition of the Wichita-Sedgwick County Unified Zoning Code.

DONNA GOLTRY: Planning Staff, "Item #11 is looking at a comprehensive revision of the Unified Zoning Code. We had a briefing two weeks ago where I went through the major changes that were recommended. In addition to those changes, I just handed out to you a page that deals with the definition of correctional placement residences. It is the first sheet of that supplemental handout you got today. If you look at that handout, there is a suggested definition sentence to be added to the definition of "correctional placement residences" that would have the effect of requiring correctional day reporting facilities for people to report more than three times a week or six hours a day to fall under the same rules and guidelines that we use for "correctional placement residences", be they either limited or general. MAPC Advanced Plans Committee met and looked at a simpler definition a week ago last Tuesday. After we looked at that definition, the Law Department looked at it further and found that we had ensnared such places as Alcoholics Anonymous meetings in our definition, and they suggested some revisions. Joe Lang is here from the Law Department and can speak to that. We had ensnared some other things that we probably didn't probably intend to. Here is a revised definition. This is the first chance the MAPC Advanced Plans Committee had to see it too. (I guess it was in the handout that went out last Thursday). In addition to the packet, I made a mistake on trying to correct a formatting error on the table of "Use Schedule" and it deleted several lines, so the second part of your packet is going back to the old one that has the spacing errors, but at least it has all the information in it. Then the third and fourth items are things that have been received today regarding cemeteries and portable storage containers. I believe we had a briefing two weeks ago where we went over the major proposed change to the zoning code. So today, unless there is some disagreement with that approach, I thought we would open it up for public testimony on the code. Marvin I think we are ready to precede on that." Garofalo chaired in Michaelis absence.

GAROFALO "Any questions for Donna?"

GOLTRY "How much time per person?"

MILLER "How much time per person do you want to allot, say three minutes?"

Motion: I will make a motion to allow three minutes per speaker on this item.

McKay moved, **Lopez**, seconded the motion, and it carried unanimously (11-0).

Michaelis returned to the meeting.

GOLTRY "Before I step down I do want to point out that there is legal counsel from both the City and the County. There are some legal issues for the items before you today, so we will be utilizing their resources today as well."

MICHAELIS "Is there anything significant that either the county or city legal can tell us prior to public hearing?"

GOLTRY "Yes, I think we can ask Mr. Lang to comment on the correctional placement day reporting facilities because he has been privy to that. The alternative housing board met on that this week. That would be useful. I should say that we did go to the DAB meetings (on the proposed Amendments). I have been to one personally, but representation had been to all six DAB meetings this week and there has been some testimony received. They have not sent us any formal responses. The concerns we heard at DAB: we had one DAB board who was concerned about going from SF-6 to SF-5 because they were concerned with the 5000 square foot lots as the minimum size. Another one was not concerned about going to smaller lot size, but they were concerned with the name change. We had concerns expressed on the correctional placement residences and the day reporting center issue. DAB II talked about portable storage containers but did not suggest any changes to the proposed language that is in the draft that you have received. Seems like I am missing one other concern that was raised at the DAB this week. Surprisingly there were few comments from the DABs or the people at the DAB meetings. Joe wants to speak about 'correctional placement residences'."

LANG "Joe Lang from City Attorney's office. I think Donna has fairly well covered the Day Reporting facilities. We worked on a definition that would be narrow enough not sweep in Alcoholic Anonymous meetings, of the 48 hour DUI weekends and some of those things. We visited quite a bit with a representative from the Department of Corrections working on a definition that would include what is actually going on in these centers which is a result of a law change. We looked over the law that was passed in 2000 that allowed these centers to work as they are and we are recommending to you that this definition would be added to correctional placement residence. It would be regulated in the same way and the housing board has looked at that too. So, unless you have questions on the definition that is proposed to you I don't have anything further."

MICHAELIS "Mr. Lang, the crucial part of that is the three or more days per week in the six hours?"

LANG "Correct. It is in the definition portion too, the non-residential community supervision, which is made a part of the community corrections program and we are getting over 48 hours but yet not requiring everyday to meet with some of these people, while they are supposed to report everyday, because of illness or job or other things they may not be there everyday. We thought that three days would catch the people that the people that the facility are interested in."

MICHAELIS "Any further questions of Mr. Lang? Thank you sir."

ROSALIE BRADLEY "I live at 1401 Julianne, in Wichita. I want to discuss the daily reporting center facilities, some of what I have to say you may already know. If not, hopefully I can enlighten you. I have learned a lot since February 2, since my state representatives were informed by the Department of Corrections that they were going to put a day reporting center at Twin Lakes. Many questions remain unanswered although we have sought lots of information. Day reporting centers are a new creation of the Kansas Legislature in May 25, 2000. The authorization from the Department of Correction to expand funds from the federal Violent Offenders Incarceration Truth and Sentencing and Incentive Grants Program for the operation of day reporting centers for ½ of the year fiscal 2001. The secretary was to do this by private contractor. Quoting 'the contract shall be designed to use daily reporting center to divert offenders who would otherwise occupy space making additional prisons space available for violent offenders'. In other words, a mini prison. The contract was to be awarded on previous experience working with and overseeing offenders in a community setting not in a treatment format, but in a monitoring security format. The public policy intent is to provide a program that diverts conditional violators from prison while continuing to protect the public safety. All DRC's are to provide offender programming from 7:00 a.m. to 10:00 p.m. at night, 7 days a week. Offenders will be expected to be in a DRC site or an approved location such as work, 7 days a week for 15 hours a day." That is written in the state stuff. Another requirement, a site shall not be near or adjacent to daycare centers, public parks, recreation center areas, taverns or private clubs, adult entertainment facilities, public schools, or residents who are suffering from developmental (mental or physical) disabilities. I believe the day reporting centers are a very serious matter for the community. I believe this is just the beginning. I expect to see more of them located in our community in the near future. The current proposal calls for an average of 120 offenders in the facility that can be located currently in any LC-general office zoning."

MICHAELIS "Your time is up, do you need additional time?"

MOTION: "I will make a motion to allow three minutes per speaker on this item."

McKay moved, **Johnson** seconded the motion, and it carried unanimously (11-0)

BRADLEY "I do not believe the new zoning definition that I received last Monday is adequate to ensure the protection of the public safety. I believe these facilities are not alternative correctional housing facilities. In Senate Bill 323 it says to provide highly structured supervision in the community. For up to 220 condition violators, these are parole violators no matter how minor the violation to be retained, in the community, in lieu of sending them back to prison. I do not believe

highly structured supervision can be provided in a general office facility. I strongly urge the adoption of new zoning standard for DRC's as correctional facilities, but I also believe the location at a new DRC should have more restrictive zoning at being proposed. At minimum, it should include all the state and federal requirements."

MICHAELIS "Any question of the speaker? Are we just hearing open testimonies? Okay next speaker."

BOB KAPLAN: I am at 430 N. Market. About six, seven months ago I asked the Commission to direct the staff to work with the Department of Law and incorporate in the new codes specific provisions dealing with outdoor storage containers. We had a lot of difficulties and I didn't feel we had a good regulatory control. In over the last six months staff has worked with my clients, particular Budget Box, and some others and I have stayed out of the way and the came up with a pretty good ordinance. They got a pretty good result I think as in collaborating with each other. I have two small changes. I gave you a hand out page 78 of your proposed ordinance, rather than trying to go through section E-3, E-1, just turn to page 78. Entitled temporary placement of portable storage containers. Item # 1, I requested a provision be added to that to provide a mode for extending those 90 days. Ninety days is really inadequate for most of the boxes. The large retailers particularly, Christmas season, back to schools, spring cleaning time, 90 days does not give you time to get your merchandise in to get through your sales period and get your boxes out of there. I would like a provision for extension. Item #9 provides for a form to be filed to report to the Planning Department of the location of the containers. That is okay but I don't want that open to the public. That is for proprietary information. None of the clients that I want wants their competitors to know where they are putting boxes. It is proprietary and we only ask that that be kept confidential for the use of the Planning Department. I have taken the liberty; I made it easy on everybody, I have written revisions to the ordinance. I gave you a handout and the italicized portions of the handout are the revisions, which I am suggesting. Dale says they are confusing. I thought they were very well done myself but those are the two revisions I am suggesting. Then because I knew we were going to have time restraints look at page 2. In page, 2 I have given you in writing the reasons my clients are asking for the extension. The first one 90 days is just not sufficient without some provisions for extensions. As the request to provide notice, provisions we want to keep our information proprietary. I think these are very reasonable enhancements to the ordinances. Not asking for much beyond that, I think everyone has done a pretty good job and we are satisfied."

MICHAELIS "Any question of the speaker? Thank you Mr. Kaplan. Anyone else wishing to speak on this item?"

TODD DEVEREAUX "I work for HOC storage. We are probably the largest storage business in town. I do agree with the majority of what was said. We also wanted to increase the amount of days used at minimum of 120 days, which is an extra month. I already got stuff on some of my units for Halloween so we are dealing pretty far out in time. I hope that 120 days won't make a big difference to the City. Finally we were wanting to see if we can't on item #9 as far as us doing the paperwork, our renters are the ones who are responsible basically, they are the ones who will be fined. We were hoping to pass on some of the wordage on to the renters of the units. Once the unit is placed, there it is very easy to move by somebody else besides just us in town. There are six or seven tow companies in town that can move this. We don't want to be responsible for something, for something that somebody else does. Therefore, we were hoping to have the wordage on there saying that the lessee or whoever is renting is also responsible for the paperwork to be filed. We also want to see if there is anyway that we can somehow get a zoning map. We have to rely on calling the City everyday to find out which zone a particular address is in, is going to be quite cumbersome. I think you all would agree. I don't think Central Inspection really wants to handle 25 – 30 phone call a day just from us as well as Budget and the other companies in town. That is all I have."

MICHAELIS "Any question from the speaker?"

GAROFALO "Just to clarify for me in paragraph 9 it would be the lessee rather than the owner."

DEVEREAUX "Correct. We just lease our equipment out. I thing it ought to be more there responsibility."

MICHAELIS "Anyone else wishing to add commentary on this item? Seeing none, are we just taking this under advisement or are we suppose to taking some action, next speaker."

JOHN DAILEY "My address is PO Box 381, Valley Center Kansas. I have an objection of the way there has been no public input, until it come time and after it is written it hasn't been asked of the people that it effects, what do we think about this. They just take what they have mess it around a little bit, put out new stuff and that is what it is and until it is printed out, we are not considered. There is on page 2, there is number 12 up near the top "too provide adequate notice on subsequent changes to the Code and an opportunity for interested parties to be heard". There has not been adequate notice. The word might have been out there if you have a business, have lawyers to keep track of this stuff, but there has not been adequate notice. In the past 10-years, they have changed definition to make them a little bit stricter they don't ask, "What do you think of this definition?" They just change it and it is put into effect. And you guys probably really don't read everything that goes through. They have changed the name of the zones--this is demonstrated on page-- 41 it has what it used to be, what it is now. By changing the definitions, by changing the names of the zones what in effect what you are doing is you are changing the properties without notifying owners. You people know if an owner wants to change zoning, they have to go through a lot of paperwork to come up and ask you if they can do it, say what they will do and what they won't do. There are signs posted out there with a phone number so the public can get information that we are changing this. That is not fair to the public. I object to that, that things are changed like that. One thing if you could answer Donna or someone on the committee could answer, on page 4' the number 3 near the top, 'that no non-conformities are created by adopting this code'. This is I think what we call normally grandfathering. I would like to have

this explained more. The way I get it is if it existed in the 70, 80, or 90s, if it existed legally zone wise, then it should be what I called grandfathered and should be permitted to exist until that use is abandoned. Thank you."

MICHAELIS "Next speaker."

REX MORLEY "I live out by 5811 S Preston Trail out by Derby. I have a Rose Hill phone number and Derby post office handles my mail and I don't know who I really belong to out there! I do know that I am in Sedgwick County. My purpose of coming up here is because of a couple of items on your list that you are going to revise and items that you still have in the zoning. He touched on a couple of subjects and especially the legalese in the manner which some of these codes are written. Any of you folks speak Latin or is that strictly an attorneys forte? The reason I say that is, because these are so vague and ambiguous that you would have to have an attorney to explain what your rights are and what they are not and ask if he could get a good guess on it too. Now my primary reason for coming down here is to speak to you on that part and to also maybe to live a little more about defining who these codes go to, who they are for and why? I live in the County and it seems to me that I'm being kind of forced by this unity of code factor to live under a lot of rules and regulations that city people are expected to live under that really don't conform to the way we live out there. These are some the things we are being hit with. Like inoperable vehicles, speaking of which let's talk about inoperable vehicles. I think if you look on page 36 of the zoning you will see something there, and I would like to see you...by the way I forgot to really tell you who I am. I just came of the Sedgwick County Commissions Nuisance Assessment Committee to try to help them try to straighten up some of their codes that they are enforcing. We just made some recommendation for some changes on that. I would like to see you folks do if you decide to do some of this stuff is to get up a group of peers to go over these codes that everybody is enforcing on them. See if they can't help you folks to get these things into a position where they are done right and fairly and where people know what they are being charged with anyway on page 36. It states Inoperable Vehicles, I would like for you folks to consider removing the words "normal" and in a normal safe manner off of that. Vehicle Inoperable section on B. You are asking a code enforcement officer to go out and make an assessment that only the highway patrol supposable has the expertise to decide what is a safe and normal operation of a vehicle. Most code enforcement officers do not have that expertise. Like I had a patrol officer told me at the inspection station on Hillside, Jeeps have no windshields, but I know that code enforcement officers tell people that there code is inoperable because it doesn't have windshields."

MICHAELIS "Your time is up. Would you like additional time?"

McKay left the meeting at 5:45 p.m.

MORLEY "Yes."

MOTION: "I will make a motion to allow the speaker additional 2 minutes of time.

WARREN moved, **HENTZEN** seconded the motion, and it carried unanimously (10-0).

MORLEY "I would like to see that removed from that part of the vehicle inoperable section, because really zoning code enforcement officers are out there to enforce what is on the property, not while they operate. Other than if they become a public nuisance. That is another point; it is hard to look at laws that are designed to enhance the eye of the beholder vs. the eye of the person who owns it. Vehicle Recreation, page 36. You have body width not to exceed 8 feet and body length not to exceed 40 feet. I would like for you folks to consider maybe having someone to look into the fact that recreational vehicles are a little bit bigger now and maybe modify that to reflect that excess size in recreational vehicles. Wrecker salvage yard, page 38, you have down here the word "and/or" on this on page 38. I would like to see "and/or" removed. Because what you do is you put the guy that is the hobbyist that is disassembly a car in the condition of being a wreckage and salvage yard by saying "and/or." If he is only taking the car apart for his own personal use, he should be allowed to do so. But the junky man who makes a living out of tearing cars apart is not right. In fact, it would take him out of the hobby of reworking cars for his own personal use. I would like to see that word taken "and/or" out and remove this man for being in business just by perception of dismantle. I would then like to see you folks add maybe this clause. "Vehicle collection, private property means a lot, land or structure or part thereof used for the collection storing dismantling, recycling of manufactured equipment, machinery, appliances in operable vehicles, miscellaneous parts, recycle material all for the personal non-business individual provided they abide by the code of individual screening for the individual instead of lumping them as a business". I think you really need to define what applies to me out in the county on 5 acres and what does not. Like on that recreational vehicle Judge Macias up in the court told that man that his RV was not a recreational vehicle because it didn't have a motor in it, and it says right here in your book that it is a recreational vehicle. That is why I would like to have this ambiguous statement out, so people will get a fair trial. Thank you for your time."

MICHAELIS "Thank you, for your comments. Any additional comments?"

CHARLES PEASTER "I live at 9453 N 135th St W., Sedgwick, Kansas. I am curious if anybody proof read this paper on page 9 the Airport overlay district left off "without the accident potential zone". On page 16, they added, "for area where did the wording come from and why take out the wording or portion thereof". On page 25, Parking Area Private why take out the wording "or the temporary stored." The words that have been taken out on this in other places have a line slashed through them and other wording put in underlined in this particular case it is not. On page 37 Vehicle Storage Yard, you left out the word "freight" in front of trailer, which makes any trailer with a gross weight of less than 2,000 lbs that is including a trailer and the contents of being in violation for sitting there for longer than 72 hours, which puts everybody in

this room in violation. On page 38 define junk, both waste and discarded material. You add it but you don't define it. On page 153, "unoccupied recreation vehicle, boats, trailers that are exempt from motor vehicle registration by the state of Kansas and in a unincorporated area of the County only construction equipment with less than 50 horsepower." Gentleman there is not trailers in the state of Kansas that are exempt. If the vehicle and the gross weight is over 2000 lbs it has to be licensed. My kids have a travel-trailer it has a ARMV tag on it. A car trailer has over 2000 lbs. The highway patrol says it must be registered and it must be tagged. If you have a pickup bed that is a converted trailer and you haul, more than 2000 lbs with the weight of the trailer and the what's in the content it must have a tag. Now you put wording in here that you can't live with. It is like Rex said part of us are here because we have had Code Enforcement coming out and taking pieces of this and even in the new wording of the inoperable vehicles they have added, and they didn't put in here that they added, but they did. They added some sections. The old one didn't have the wording "it shall also mean any vehicle that because of mechanical defects wrecked or partially wrecked frame or body or dismantled part cannot be operated in a normal or safe manner. In the old code that wasn't in there in the new code it is. Under parking the letter, "P" means temporary location for not more than 72 consecutive hours, of motor vehicles that are in operating condition and that are capable of movement under their own power. You park your car in your driveway and go on vacation for 10-days and you have a parking ticket in the mail because your vehicle was not operated for 72 hours. Somebody went by turned it in to code enforcement, they wrote you a ticket and sent it to you in the mail. Under, Parking Area Private, page 25, it means; "an area, other than a street or alley, used or intended to be used for the parking of the motor vehicles owned, leased, borrowed, etc, by the occupants of a dwelling which is located on the same zoning lot, and where not more than one commercial vehicle per dwelling unit is parked." Well that tells me that if I have that off street parking that I should be allowed to park my vehicle there for longer than 72 hours, but if you go to number A it makes it a violation. Has anybody really set and read this; gone with the old codebook and gone with the new codebook? Because you have added a lot that, I'm not dealing with and it doesn't really effect me I don't think because I have not had time to read it all. Whom proof read this? There is a whole column left out. A whole section under the lettering, under page 16, there is an addition. Page 12, there is a part taken out. I'm sorry my notes don't reflect. There is under the alphabetical part there is a complete one section left out of this. Before this is sent to the County Commission or the City Commission, this thing ought to be proof read, have everything brought back, and we ought to have some input on this thing. Thank you for your time."

MARK CALBECK "I'm in the leasing of clubs business here in town. The problem I have with this is when you get into sexually oriented business you are going to adopt this plan that the County has already adopted, but the County has clearly not enforced because it is new sexually oriented business that have opened up within the last two week out there. But you are saying by 2004 all these businesses have to be closed by this. I want to know where you come with that and if you are worried about where these sexually oriented business are why don't you set up districts like those that they did to keep everything out of Old Town. That is where it started was when another club owner tried to put one in Old Town the City adopted a law and then the County went and adopted a law. Everybody it is kind of like jumping back and forth but none of these laws have been tested in courts. I am wondering how you can set up a code to say that a business that has been there for 25 or 30 years has to close by 2004. Can anybody answer that question for me?"

MICHAELIS "We can't answer that. We are just here to hear testimonies and hear your opinions."

CALBECK "I think a lot more research should be done in that area alone plus everyone else has a good argument to that before this plan is even accepted that you guys go through it and see what benefits and doesn't benefit. The City and the County are two different styles of living and two different complete issues. Thank You."

DAN LEWIS "I am a resident of 156 North Poplar; lifelong resident of Wichita and taxpayer. I too want to echo some of the comments that were stated further also and if I am procedurally incorrect, give testimony. Because, it is my understanding, so far as this has proceeded, there is not opportunity to ask questions of the Commission or the legal department or planning staff that are present, am I correct in saying that?"

MICHAELIS: Yes.

LEWIS: Very well; on page 36, let's look at the new rules and construction of definitions which section b Vehicle Inoperable is compared with the old code or the currently adopted code page 17, item h, under section 2b. The gentleman pointed out that there had been some additional working added to this. As I did come up to do a comparative look at the old code, and the new code, I was told there are really no major changes. However, I do want to point out in that third sentence "it shall also mean" I do think that the code, in my own personal opinions, quite vague and ambiguous although it has not been challenged in District Court before a jury. I do believe there has been opinions stated in the District Court by judges that this statement is vague and ambiguous. As it stood in the previous definition not opposed to the new one and I think by adding that sentence that begins with additional "shall also mean any vehicle because of mechanical defects wrecked or practically wrecked frame or body or dismantled parts can not be operated in normal and save manner." The addition adds a more vague and ambiguous wording to an already vague and ambiguous section of this code. I would like to know where and when legal would comment on that so that I would be able to hear that. I have since 1997 been visited by the Sedgwick County Health Department who is enforcing similar code not zoning code but health code but also deals with inoperable vehicles. Their definitions are somewhat different but they seem to have one standard that they use and that is the first sentence in the old code and the first sentence in the new code; any vehicle that is unable to operate and move under its own power. Commissioner Warren I believe hinted earlier maybe indicated earlier that he was involved in the car business, well I am not involved in the car business, I happen to own more than one car. I own three cars and I have three children and two of them will be within the driving age within the next five years. It is not my intention to keep those vehicles tagged and insured for 5 years until they become of driving age. It is not my intention into get those vehicles in such a condition pristine condition-that they will be willing to drive them and impress

their friends at school to do so. It is my intention as a parent to teach my children the value of property and the maintenance of property and the proper maintenance of property. I am out of time I would like to ask for an additional 2 minutes?

MOTION: I will make a motion to allow the speaker additional 2 minutes of time.

WARNER moved, **GAROFALO** seconded the motion, and it carried unanimously (10-0)

LEWIS: So as a standard of raising my children I have chosen to take the vehicles out of being licensed, tagged and insured and not drive them on the vehicle, change the title to them to be off highway vehicles, I still pay property taxes on those vehicles. I believe my constitutional rights are being violated by the City and Health Department to continually to prosecute me without success because I chose to have those vehicles, save them for my children's use, and not tag them. Operate in a safe manner I don't know what that means. If I were to consume an excessive amount of alcohol and attempt to operate my vehicle I would be operating in an unsafe manner, but there is no mechanism on it to prevent me from doing that. I will say this in closing; since 1997 the Sedgwick County, City prosecutors and Municipal Court have attempted to compel me to remove those vehicles from my property. Those vehicles are still there because I believe they have the authority to remove them, I don't believe they can legally remove them and when challenged in the District Court in a court of record before a jury of my peers, the City withdraws their case. I know why, because this they are wrong, this code is wrong. Thank you.

WARREN: Just for the record, I don't know if it is a misunderstanding or not, but Commissioner Warren does not in the automobile business nor has he ever been in the automobile business nor does he intend to ever be in the automobile business.

MICHAELIS: Are there any other persons wishing to speak on this time?

TOM WIGGINS: Earlier I could have said good afternoon. I have set here for 3 ½ hours; I don't know how you all stand it. I live north of Valley Center on 5 acres. The way this codebook is written up, part of it should be rewritten where somebody who lives in the City where they have close quarters should have one set of rules. People who live out in the County who have 4 or 5 acres and got reason to work on their own cars for a hobby should have a different set of rules. The County Commissioners did set up a special committee to do this with and I think you folks should be looking at doing something like that similar. Whoever wrote this code book had to be a code enforcement officer and they were licking their chops while they were writing it. They just keep tightening it up all the time. It is not funny when you have to go over there in front of a kangaroo court to try to defend yourself against stuff that don't even exist in this book, it is hell. I went through it for over a year. When I finally got over in front of a real judge in District Court where I had six cases against myself, without an attorney, I filed a motion to dismiss and I got them dismissed. The judge said the County Prosecutor, "I thought you were a better attorney than this." She said she just was not seeing this in the book. So you need to redo this whole thing. You guys sit around and think it is funny. It is not funny. I, the president of the KARZ, it is Kansas Advocating Responsible Zoning and we have over 100 members, and we have law enforcement people, attorneys and some professional engineers, and professional people in this group and they are taking this serious. I'm going to ask you to consider setting up some kind of committee or task force to look at this and rewrite to where the average citizen can understand it. A person living out in the county cannot even jack his car up and change his oil. That is a fact. As soon as that code enforcement officer drives by and see your car up on jacked stands it is an inoperable vehicle. You can't even park your own person car with tags in your driveway over 72 hours without getting a ticket. That is pretty serious. Thank you,

MICHAELIS: Any other speakers? I guess Marvin what's the protocol here and where do we go next.

KROUT: If you feel you have enough input and we don't need to invite anyone back for further hearings, you could make a motion to close the hearing and then I think you have two options. One is to put it on your next available regular agenda for discussion and possibly a vote if you feel ready to vote. You may have some questions you want us to look at over the next couple of weeks. You could also send it back to John McKay's committee and ask him to walk through some of these comments and then maybe after that the committee could come back to you with recommendations to changes on the new code.

MICHAELIS: I hope I'm not opening up a can of worms here, but these people made a lot of good comments, does it make sense to delay, we have a committee sitting right here.

KROUT: Part of it is we have only part of the committee.

HENTZEN: Mr. Chairman I serve on John McKay's committee and I'd like to make the recommendations that Marvin said.

MOTION: I move that we close the hearing and refer it to that committee and work with staff and take into consideration what the people have said today. We will get back to them when we are done with it. I assume it would be within a couple, 3 or 4 weeks. Then we adopt it. I don't want to adopt anything today.

KROUT: I think that, that committee can informally invite any of the speakers who spoke today. Again, if they have any questions there are some of the questions that can up that we can respond to directly to people who have questions and want clarifications and we will go ahead and do that.

MARNELL: I might add to that, when that committee meets those are public hearings and they are open to the public for people come. Before we have the next committee meeting the comments we heard today, it would be good to get all of those transcribed because I was not fast enough to keep up with the speakers. It sounded like we had a lot of good comments.

MOTION: I will second the motion that Bud made to close the meeting and report back. Send it back to the committee and anybody who want to make comments are welcome to attend that meeting or get comments through the staff and we will go from there.

HENTZEN moved, **WARREN** seconded the motion, and it carried unanimously (10-0).

12. DR2001-02 - Adoption of Historic Preservation Plan

MICHAELIS "Kathy Morgan will present this agenda item."

KATHY MORGAN, Preservation Planner, "The Historic Preservation Plan is used as a tool to meet our requirements under the Certified Local Government Program. Basically, that means that the National Park Service with the Federal Government has set up a list of items that local governments can elect to participate in so that it brings the preservation planning or preservation activities back to the local level. Just for instance, if we did not have a historic preservation Ordinance and a Historic Preservation Board, all of these applications for building permits that affect National Register listed properties or are within 500 feet of a listed property, would have to go to the state for review and that could take, at minimum 30 days. We are able to handle that here locally, so what the Historic Preservation Board did, because it written in the 1990 Preservation Plan, it was recommended that this be updated in 10 years, and so we have been working on it for approximately 12 months now. We have solicited input from local Historic Preservation Association, and we have also solicited input from the neighborhoods. I have a map up here; it was included in your packet of the neighborhoods that are affected within the 1919 city limits.

Basically, the changes that have been made is that the Historic Preservation Board now does, much as yourselves, in making decisions at the board level. Those may be appealed to the City Council. That is one of the changes that was made in this new update. There are several things that were goals that were mentioned in the 1990 Preservation Plan that have come to pass in that we now have a Historic Preservation Association here in Wichita, which there wasn't one at the time of the Plan in 1990.

We have identified a timetable—these neighborhoods are in the 1919 city limits of Wichita, which represent the majority of older housing stock, which can be eligible for federal fund programs to assist with rehabilitation and that type of thing. There are approximately 28,500 structures within those identified neighborhoods. We still have 20,000 structures remaining to be surveyed. So this sets forth a plan to get those structures surveyed and this whole thing will dovetail with the City's reinvestment initiatives for the core area. It mentions in there the existing building code and we do have a draft, we are in draft form of that right now. I think the consultants will be coming back to the City Council, probably by June. That will afford developers an easier tool to come into existing buildings so they don't have to go back and meet new building code standards. That is part of the plan.

That is basically what is in this plan update. It is just a clean up of what was adopted in 1990. There are no substantive changes other than removing those items that were listed as plan objectives that have been completed."

MICHAELIS "Are there any questions of Ms. Morgan?"

HENTZEN "Kathy, is there any significance as to when we adopt this plan? Does it have to be adopted today? Let me tell you why I ask. It is a significant interest, I believe, the Historic Preservation Plan, and coming up here at 6:00 p.m., when we are all ready to go home, and the last time it was given any attention you just told us, was in 1990. I think it is more important than that, and I would like to have a presentation under better circumstances. I am asking you, do we have to vote it up or down today?"

MORGAN "This is the time table. We have received a Historic Preservation Fund Grant from the State Historic Preservation office to print these plans. We make these available free of charge to the public. The only constraint that we would have, Mr. Hentzen, is we would need to be able to present this upon you adoption to the City Council for their approval, and in time for us to get the plans printed and the grant closed out by June 30. So if it something that can be put back on the agenda, and I can create a more detailed presentation for you. I had several Historic Preservation Board members here to answer any questions, but they had other appointments they had to get to."

HENTZEN "I am just telling you that it is a 'pig in a poke' right now if we adopt anything tonight. We haven't studied it near enough, and haven't had a decent visit about it."

MICHAELIS "If I may make a suggestion—maybe the next meeting we start at noon, have a lunch and have the presentation prior to the meeting?"

MILLER "I can commit to starting at noon, Marvin is the only one that can pay for lunch."

MICHAELIS "Marvin will pay for lunch. Would that be better?"

MORGAN "Gentlemen, I am willing to do whatever I need to do to satisfy your questions. I think the Historic Preservation Board members would like that opportunity to come and dialog with the Planning Commission. We are having a board meeting Monday afternoon at 3:00 o'clock, and I don't know if that is appropriate to discuss when the next date you would want to have it happen."

The only thing that I would ask is that the City of Wichita and the Historic Preservation Board are hosting the annual statewide preservation conference on April 5 through 7, so if we could at least postpone it until that Thursday, which I think would be April 12. Then the next MAPC meeting will be April 19, following that preservation conference. That is taking up a lot of my staff time right now, and I want to give this a fair shot and provide you with all of the information that you need."

MICHAELIS "Okay. How about if you get with Dale in the meantime and get maybe a couple of dates of what would be ideal and what would be the last possible scenario because of your time frame, and then we will coerce Marvin into buying lunch for your group and our group."

MORGAN "Okay."

PLATT "I have no objection to supporting this, and I think it would be very useful to meet with Preservation Board. That would be a delightful opportunity for all of us. On the other hand, I have no objection to approving it today. I don't see any reason to drag it on."

WARREN "That is what I was going to say. It would be different if there was going to be a significant change. If not, maybe we could go ahead, for expediency, and approve it and then still go ahead with a presentation."

MICHAELIS "The door is open."

WARREN "But, do you think there will be any changes to speak of?"

HENTZEN "Oh, I just think it is so danged important that we don't need to do it in a 5 or 10 minute presentation when we should be on our way home. I just think it is more important than that."

GAROFALO "Was this advertised for a public hearing?"

MORGAN "Yes, sir."

GAROFALO "Would we have to advertise it again?"

MILLER "Not if you were to adopt it today."

PLATT "We could close the public hearing."

MILLER "Yes."

GAROFALO "I mean if we didn't."

MILLER "Well, then I guess you would want to continue the public hearing, and you would have to name a date. Yes, we would have to re-advertise if you adopt it today."

WARREN "Bud, I think what you are saying is that we need to be abreast and informed of this and spend a little time with it. But if that is not going to effect any changes to this document, I would suggest that we go ahead and adopt it today."

MOTION: I move that we approve the plan and close the hearing and ask staff to set up a 12 o'clock lunch meeting with the Preservation Board to discuss it with them."

PLATT moved, **WARREN** seconded the motion, and it carried unanimously (10-0).

MORGAN "Thank you very much."

Ray Warren left the meeting at 6:15 p.m.

13. DR00-10 – Adoption of Midtown North Neighborhood Revitalization Plan.

DAVE BARBER, Planning staff gave the following overview of the Midtown North Neighborhood Revitalization Plan:

Barber presented an overview of the Midtown North Neighborhood Revitalization Plan to the Commission members. Barber described the key event points in the development of the plan, from its inception in early 1999 up to the finalization of the latest refinements to the 21st Street improvement concept in February of this year. These latest refinements have been included as an addendum to the final plan document. Barber mentioned that the final plan (including the addendum) was presented to the District VI DAB on March 5, 2001, where it received unanimously support and approval from the DAB. Barber then summarized for the benefit of the Commission, the key elements of the final plan.

The Plan consists of eight goals and associated action steps. Five of these goals are focused on community programming and capacity building issues. These goals are:

- Continue to work on crime reduction in the area recognizing that the crime rate (especially gang and drug related) has decreased in the neighborhood;
- Establish a community policing presence in the Evergreen Center;
- Encourage local involvement in economic development and preserve business opportunities;
- Initiate better marketing and promotion of the community recreation programs in the Evergreen Center, especially through local churches, schools and businesses;
- Preserve and strengthen the neighborhood churches.

Three Plan goals are focused on physical improvements to the neighborhood. These goals are:

- Add street improvements;
- Add better street lighting (in residential areas south of 21st Street);
- Preserve historic buildings – particularly the Nomar Theater.

Barber then proceeded to describe the specific physical improvement elements of the plan, the majority of which are related to improvements to 21st Street between Broadway and Park Place. The following is a summary of the physical improvement plan elements:

- Straighten and consolidate the intersection of Market Street at its north junction point with 21st Street.
- Install left turn lanes southbound from the westbound lane on 21st Street at both Waco Street and Arkansas Street.
- Install left turn lanes northbound from the eastbound lane on 21st Street at both Market and Broadway.
- Install raised landscaped median treatments within segments of 21st Street between Park Place and Broadway.
- Retain 4 traffic lanes within 21st Street.
- Acquire sufficient additional right-of-way and install landscaping and minimum 8 ft. wide sidewalks along both sides of 21st Street from Broadway to Park Street, as part of the 21st Street improvements. Add landscaping treatments along Market north of 21st Street.
- Utilize the area immediately north of 21st Street between Market and Broadway for a combination of off-street parking and commercial redevelopment.
- Explore the possibility of establishing a kiosk on 21st Street containing area and neighborhood information.
- Establish a gateway for the area, located in the context of an eventual mercado site.

Plan recommendations pertaining to commercial redevelopment were also reviewed along with recommendations for improving neighborhood street lighting south of 21st Street. The following is a summary of the commercial development elements:

- Buildings on the SW corner of Market Street and 21st Street should serve as a basis for design elements in any new commercial buildings or building renovations in the area.
- New office/commercial building redevelopment along the north side of 21st Street, between Park Place and Broadway, should be required to meet a zero lot line building setback from 21st Street, in order to maintain a building setback character consistent with those existing structures along the opposite (south) side of 21st Street.

Bill Johnson left the meeting at 6:23 p.m. (During presentation)

Bud Hentzen left the meeting at 6:26 p.m.

Richard Lopez left the meeting at 6:26 p.m.

MICHAELIS "Dave, I hate to interrupt you, but we have lost our quorum."

MILLER "Didn't Bill just go to answer his cell phone, which just rang?"

MICHAELIS "Well, even if he comes back, we still don't have enough."

BARBER "Could I make a request, Mr. Chair? Because we have to continue the hearing, could I request that this be the March 22 Planning Commission agenda? I know that it is subject to Marvin's approval, but it is imperative that we get moving on this, so if we could be first rather than last on the agenda. I don't think it will take much time to go through this, frankly. Maybe another 10 minutes and we would be done."

MICHAELIS "Request respectfully received."

BARBER "It is just a request."

MICHAELIS "Well, then, I guess for lack of quorum, we are adjourned."

BARBER "Okay."

The meeting informally adjourned at 6:30 p.m. due to the loss of quorum.

State of Kansas)
Sedgwick County) ^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2001.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)